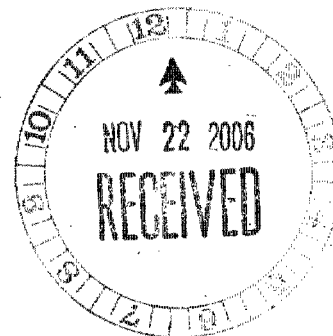


November 22, 2006

By Hand Delivery

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Room 700
Washington DC 20423



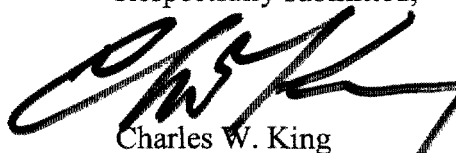
RE: Williams Olefins LLC v. Grand Trunk Corporation, Docket No. __

Dear Secretary Williams,

Enclosed for filing in above captioned docket please find the original and ten copies of Public and Confidential versions of the Formal Complaint of Williams Olefins, L.L.C. Also enclosed is a disk containing the filing and check in the amount of \$150, the requisite filing fee.

We have enclosed an extra copy to be date-stamped and returned to our messenger.

Respectfully submitted,



Charles W. King

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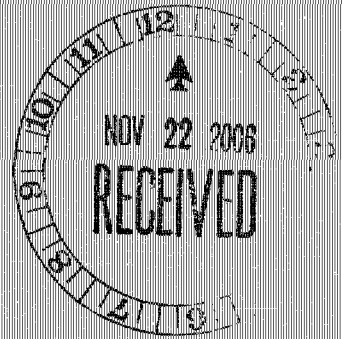
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WILLIAMS OLEFINS, L.L.C.
Williams Companies, Inc.
P.O. Box 21218
One Williams Center
Tulsa, OK 74121-1218

Complainants

v.

GRAND TRUNK CORPORATION
935 de La Gauchetière Street West
Montreal, PQ, H3B 2M9
CANADA



Docket No. NOR 42098

REQUEST FOR MEDIATION AND RATE COMPLAINT

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Charles W. King, President
Snavely King Majoros O'Connor & Lee, Inc.
1111 14th Street NW
Suite 300
Washington DC 20005
Admitted to Practice, April 10, 1967

On behalf of Williams Olefins, L.L.C.

November 22, 2006

Public Version - Redacted

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WILLIAMS OLEFINS, L.L.C.
Williams Companies, Inc.
P.O. Box 21218
One Williams Center
Tulsa, OK 74121-1218

Complainants

v.

GRAND TRUNK CORPORATION
935 de La Gauchetière Street West
Montreal, PQ, H3B 2M9
CANADA

Docket No. 42098

REQUEST FOR MEDIATION AND RATE COMPLAINT

Complainant, Williams Olefins, L.L.C. ("Williams") P.O. Box 21218, One Williams Center, Tulsa, OK 74121-1218 files this request for mediation and this complaint against defendant, Grand Trunk Corporation ("GTC"), 935 de La Gauchetière Street, West Montreal, PQ, H3B 2M9, Canada.¹ Williams brings this Complaint under 49 U.S.C. §§ 10101 and 10704.² Williams requests that the Surface Transportation Board ("STB") mediate this dispute for a period of thirty (30) days. This request for mediation stands regardless of any action the STB may take regarding this complaint in light of the current small shipment rate case proceeding, Ex Parte No. 646 (Sub. No. 1).

¹ Because some data contained in this document could be viewed by some as confidential, and to facilitate a mediated resolution, we have filed this as a confidential document, with a redacted version provided for public disclosure. We intend that this filing format will facilitate the mediation process.

² This complaint is brought against the GTC because, as the originating railroad, it provides the rates against which the complaint is lodged. However, since the Geismar-Longview movement also involves the Union Pacific Railroad, this complaint is also being served on that railroad.

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If the mediation is unsuccessful, Williams requests that the Surface Transportation Board ("STB") prescribe reasonable rates for GTC's transportation of propylene between Geismar, LA and Garyville, LA and between Geismar, LA and Longview, TX, and that it award damages, plus interest, to the extent that Williams has paid common carrier rates in excess of a reasonable maximum for such transportation.

In support of this Complaint, Williams states as follows:

1. Williams owns 5/12th of and operates an olefins cracker at Geismar, LA with a production capacity of 1.3 billion pounds of ethylene per year. This year, Williams expects to ship over 300 tank cars of propylene from Geismar to Garyville in single and multiple-car blocks. These shipments are made entirely over the GTC. The current rate for this movement is \$[REDACTED] per carload, plus a fuel surcharge. We have included fuel surcharge at an average of 11.75% based on a recent range of 9.75 to 13.75 percent.³ This year, GTC's rail freight revenue for Williams' traffic over this lane should be on the order of \$[REDACTED]; we estimate revenue including fuel surcharges at \$[REDACTED]. In 2006, Williams expects to ship approximately 170 carloads of propylene to a customer in Longview, TX in multiple car lots that range from 2 to 12 cars. These shipments move on the tracks of the GTC as far as Baton Rouge, LA and then on the tracks of the Union Pacific ("UP") from Baton Rouge to Longview. The current rate for this movement is \$[REDACTED] per carload plus fuel surcharges. Estimated total rail charges for Williams' traffic on this lane, including fuel surcharges, come to approximately \$[REDACTED] during 2006.

³ Source: CN Fuel Surcharge 7401 surcharge range applicable during the September 2005 to November 2006 period.

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Combined, the total payments for rail service on these two lanes come to approximately \$[REDACTED] annually.

Qualifications for Simplified Procedures

2. In its December 27, 1996 decision in Ex Parte No. 347 (Sub-No. 2), *Rail Rate Guidelines – Non Coal Proceedings* (“the 1996 Decision”) the STB set forth four determinations that a complaining shipper must make in order to qualify for the simplified procedures outlined in that Order:

- (1) The feasibility and anticipated cost of preparing a SAC [Stand Alone Cost] presentation in that particular case.
- (2) An estimate of the other costs to be incurred in pursuing the rate complaint, including participating in the jurisdictional threshold and market dominance aspects of a proceeding.
- (3) The full relief sought, including all reparations as well as the level and duration of any rate prescription.
- (4) The present value of the relief sought, obtained from applying an appropriate discount rate and appropriate time horizon to the relief sought.

3. Starting with item (3), Williams is requesting that the Board set rates for the two issue movements that yield revenue-to-variable cost (“R/VC”) ratios equal to that of all other traffic on the involved railroads that exceeds a R/VC ratio of 180 percent. In its June 26, 2006 Decision in Ex Parte No. 646 (Sub No. 1) at page 25, the STB identified the 2004 Revenue/Cost Ratios over 180% (“R/VC>180”) for each of the Class 1

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railroads. The R/VC>180 for the GTC is shown as 233 percent, and that for the UP, the other railroad participating in the Geismar-Longview movement, as 210 percent. Weighting these two ratios by the proportion of each railroads miles in the Geismar-Longview movement yields a composite R/VC>180 of 211 percent.

4. In his accompanying verified statement, Mr. Tom O'Connor, Vice President of the economic consulting firm of Snavely King Majoros O'Connor & Lee, Inc., and Mr. Kim Hillenbrand, senior analyst with the same firm, testify that the variable cost of the Geismar-Garyville movement is \$[REDACTED] using GTC's STB URCS costs indexed to 2006.⁴ This shipment cost, multiplied by the GTC's R/VC>180 of 233 percent produces a reasonable rate of \$[REDACTED] per carload. They further testify that the variable cost of the Geismar-Longview movement is \$[REDACTED], using the respective railroads' STB URCS costs indexed to 2006. This shipment cost, multiplied by the two-railroad's weighted R/VC>180 factor of 211.4 percent produces a reasonable rate of \$[REDACTED] per carload. We have included fuel surcharges at 11.75 percent, an average based on the CN 7401 surcharges in effect since September 2005 to make the proposed rates fully comparable to the existing rates. We did so by increasing the rates noted above to reflect an 11.75 percent fuel surcharge⁵. The recommended Geismar-Garyville rate of \$[REDACTED] reflecting GTC costs indexed to 2006⁶ would increase to \$[REDACTED] reflecting the fuel surcharge. The recommended Geismar-Longview rate of \$[REDACTED] would increase to \$[REDACTED] reflecting the

⁴ This is an average of the single car cost and the multiple car cost computed using the STB's unadjusted URCS unit costs.

⁵ This midpoint of high and low fuel surcharge rates for the 9/05 through 11/06 period is slightly higher than the 11% applicable in November 2006.

⁶ We note the incongruity of indexing costs upward while CN continues to drive its costs downward to record low levels, as demonstrated by their operating ratios.

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fuel surcharge. Williams submits that the rates we have computed are fair and reasonable to both Williams and the railroads. They provide the railroads with the same markup over variable cost as they receive overall from their other high rated market-dominant traffic.

5. The present value of the relief sought is based on Williams' request that the Board award Williams reparations for overpayments since the date that the present rates became effective as private tariffs. For the Geismar-Garyville rate, that date was June 30, 2006, and for the Geismar-Longview rate, that date was April 1, 2006. Furthermore, Williams is requesting that the Board stay any further rate increases beyond the application of the Rail Cost Adjustment Factor ("RCAF") for five years beginning in 2007. Using the Board's recent cost of capital for the railroad industry as the discount factor,⁷ the present value of this relief comes to \$[REDACTED], computed as follows:

⁷ See Decision of September 20, 2006, STB Ex Parte No. 558 (Sub-No. 9), *Railroad Cost of Capital – 2005*, decided September 15, 2006.

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[REDACTED]

6. In its June 26, 2006 Decision in Ex Parte 646, Sub No. 1, at page 36, the Commission estimated that the cost to present a full Stand-Alone Cost ("SAC") case is on the order of \$3.5 million. This is more than four times the present value of the relief that Williams is seeking in this complaint. Based on this comparison, Williams submits that this complaint qualifies for simplified procedures. Williams will incur some costs in pursuing this complaint, principally in the form of legal and consulting fees. Williams estimates that the total of such costs will not exceed \$50,000.

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Information Required by 1996 Decision

7. In addition to the four demonstrations identified in para. 2 above, the 1996 Decision lists nine items of information that a complainant should provide. The first of these items is as follows:

- (1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and nonrail) who have participated in the transportation of this traffic or could do so.

8. The traffic on both lanes has been moving at close to its present volume at least since the beginning of 2004. All movements are in tank cars carrying up to 70 tons of propylene. All of the Williams origin switching at Geismar is performed by a contractor other than the GTC. The costs of this origin switching operation are borne completely by Williams. None of those costs are borne by CN nor its US subsidiary, GTC. The GTC typically delivers and picks up several dozen cars at a time at Geismar because the contractors consolidate all outbound cars and distribute all inbound cars among the three co-located industries at Geismar. Williams' Geismar plant has no access to either truck or barge transportation for propylene. Propylene movements outbound and inbound are entirely dependent on rail or pipeline transportation. Since pipeline transportation is unavailable at Garyville and pipeline is unable to transport the required volumes at Longview, there is no effective transportation alternative to rail for the propylene movements.

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9. The Geismar-Garyville movement is 33.8 miles entirely over the tracks of the GTC. Between January 1, 2006 and August 9, 2006, an average of 27 tank carloads per month had made this movement, but the number varied considerably from month to month. Extrapolating this volume to a full year, total annual movement would be approximately 325 carloads, although the traffic volume varies significantly month to month. The current rate of \$[REDACTED] per carload became effective as a private line tariff when Williams' last contract for this movement expired on June 30, 2006. GTC has indicated that this rate may be increased in the near future. In addition, GTC has imposed a fuel surcharge; which has ranged up to 13.75 percent. The average fuel surcharge rate we estimated, 11.75 percent, raises the effective rate to \$[REDACTED] per carload. Since both the origin at Geismar and the destination at Garyville are captive to the GTC, no other railroad can handle this traffic. And no other mode provides effective competition.

10. The Geismar-Longview propylene traffic moves in multiple carload lots that have ranged from two cars up to 12 cars during the first part of 2006. These cars move 19.7 miles over the GTC's tracks from Geismar to Baton Rouge, LA where they are interchanged onto the Union Pacific Railroad ("UP"). The UP carries the traffic for the remaining 296 miles to Longview, TX. Williams' Longview shipments are totally dependent on rail transportation. There are no feasible alternative rail routes between these two points. The current rate of \$[REDACTED] per carload is a private tariff rate that has been in effect since April 1, 2006. As with the Garyville rate, a fuel surcharge ranging up to 13.75 percent has been applied. The average fuel surcharge rate we estimated, 11.75

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percent, raises the effective rate to \$[REDACTED] per carload. Moreover, Williams has been informed that the base freight rate may be increased at any time.

11. The second item of information listed in the 1996 Decision is:
 - (2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for this traffic.

The commodity shipped is propylene (C₃H₆) which is Standard Transportation Commodity Code ("STCC") 2912128. Propylene is a highly flammable substance that must be shipped under pressure in tank cars. These tank cars can move singly and in multiple car lots.

12. The third item of information listed in the 1996 Decision is:
 - (3) All origins, destinations and O-D pairs involved in the complaint, by commodity type.

The origin of both movements that are the subject of this complaint is Geismar, LA. The destinations are Garyville, LA and Longview, TX. The commodity is propylene.

13. The fourth item of information listed in the 1996 Decision is:
 - (4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or per month.

Between January 1 and August 9, 2006, an average of 27 carloads of propylene had moved from Geismar, LA to Garyville, LA each month, but the shipments varied

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considerably in size. Williams estimates that a total of about 300 carloads will make this movement in 2006. These cars are loaded with up to 70 tons of propylene.

14. The Geismar-Longview volumes are based on an annual volume commitment by Williams to the Longview customer. As of the end of July 2006, Williams had shipped 98 cars to this customer, implying total shipments for the year of 168 cars. The shipments are in multiple car lots, ranging from two cars to as many as 12 cars at a time. Typically, there are only two or three shipments per month.

15. The fifth item of information listed in the 1996 Decision is:

- (5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

The revenue per carload paid to the GTC for the Geismar-Garyville propylene movement is \$[REDACTED] with an additional fuel surcharge. At 11.75 percent, the average fuel surcharge we estimate, the surcharge brings the total revenue per carload to \$[REDACTED]. The revenue per carload for the Geismar-Longview propylene movement is \$[REDACTED]. With an 11.75 percent fuel surcharge, total revenue per carload is \$[REDACTED].

16. The sixth item of information listed in the 1996 Decision is:

- (6) The feasibility and anticipated cost of preparing a SAC presentation this case.

As explained in paragraph 5 above, the estimated cost of a SAC case is approximately \$3.5 million. Even if this cost could be reduced by, say, 20 to 30 percent, it would still

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vastly exceed the present value of the relief sought in this complaint. In fact, some observers see those costs as going higher than the STB estimates. It is clearly economically infeasible for Williams to prepare a SAC presentation in this case.

17. The seventh item of information listed in the 1996 Decision is:

- (7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

The accompanying Verified Statement of Tom O'Connor and Kim Hillenbrand provides the jurisdictional threshold and market dominance evidence required for this case. As noted in paragraph 5 above, Williams anticipates that the total cost of this complaint should not exceed \$50,000.

18. The eighth item of information listed in the 1996 Decision is:

- (8) The full relief sought, including all reparations as well as the level and duration of any rate prescription.

Initially, Williams is requesting that the Board mediate this rate dispute. However, if the mediation is unsuccessful after 30 days, Williams requests that the Board set a maximum rate of \$[REDACTED] per carload for the Geismar-Garyville lane exclusive of the surcharge. Williams requests that the Board set a maximum rate for the Geismar-Longview lane at \$[REDACTED] per carload exclusive of the surcharge. Williams is requesting reparations for the overcharges for the Geismar-Garyville movement since the expiration of the contract on June 30, 2006. Williams is also seeking reparations for all overcharges on the Geismar-Longview movements since April 1, 2006 when the current rate went into effect. Finally,

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Williams is requesting that the Board prohibit the railroads from increasing these represcribed rates by more than the Rail Cost Adjustment Factor (RCAF) for five years, that is through the year 2011.

19. The ninth item of information listed in the 1996 Decision is:

(9) The present value of the relief sought.

As calculated in paragraph 3 above, the present value of the relief sought is \$ [REDACTED].

The R/VC Benchmarks

20. The 1996 Decision establishes the ratio of revenue to variable cost, or "R/VC" as the basis for judging the reasonableness of any rate subject to complaint under the simplified procedures for small shipments.⁸ The "R" represents the total revenue derived by the participating railroad(s) in the movement. The "VC" represents the variable cost of the movement as calculated using the Uniform Rail Costing System ("URCS"). URCS was developed by the Interstate Commerce Commission, the predecessor to the STB, and is now prescribed in 49 U.S.C. 10707(d)(1)(B).

21. In their accompanying verified statement, Tom O'Connor and Kim Hillenbrand describe the development of the R/VC ratios for the two movements that are the subject of this complaint. As they point out, the Geismar-Garyville movement begins with a

⁸ The R/VC ratios may also be referred to as Revenue to Cost Ratios or "RCRs."

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multiple-car movement out of Geismar and terminates in single and multiple car movements into Garyville. The Longview movement is made in multiple-car shipments. Neither movement involves origin switching, as that function is performed by an independent contractor, retained by Williams, at no cost to CN or GTC.

22. O'Connor and Hillenbrand calculate the variable cost of the Geismar-Garyville movement by averaging the multiple and single car URCS costs and by including an allowance for inter- and intra-train switching. They derive a variable cost for this movement of \$ [REDACTED] per carload based on GTC's 2006 costs. Compared with the total revenue per carload of \$ [REDACTED], the R/VC ratio for this movement is 309 percent.

23. O'Connor and Hillenbrand calculate the variable cost for the Geismar-Longview lane using URCS multiple-car costs for the GTC from Geismar to Baton Rouge, LA, and multiple car costs for the UP from Baton-Rouge to Longview. They derive a total movement cost of \$ [REDACTED] per carload based on 2006 cost levels. Compared with the total revenue of \$ [REDACTED] per carload, the R/VC for this movement is 380 percent,

24. The 1996 Decision identified three benchmarks against which these movement – specific R/VC ratios should be compared:

- The revenue-to-variable cost (R/VC) ratios for all traffic exceeding 180 R/VC (R/VC > 180),
- The Revenue Shortfall Allocation Method (RSAM), and

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- The R/VC ratios of comparable traffic (R/VC_{Comp}).

25. The RCR>180 benchmark reflects the actual average markup that the carrier charges on traffic with R/VC above 180 percent. The R/VC>180 benchmark tests whether the traffic at issue bears a disproportionate share of the carrier's revenues by examining the markups applied by the carrier to its other highly rated and potentially captive traffic.

26. The STB's July 26, 2006 Decision in Ex Parte No. 646 (Sub. No. 1) reported that the GTC's R/VC>180 markup for the year 2004 was 233 percent. The Geismar-Garyville R/VC of 309 percent is 76 percentage points higher than the GTC R/VC>180 of 233 percent. The Geismar-Garyville R/VC is higher than the RCR>180 of any of the nation's Class 1 railroads.

27. The STB's July 26, 2006 Decision showed that the 2004 RCR>180 markup for the UP was 210 percent. O'Connor and Hillenbrand testify that when the markups of the GTC and the UP are weighted by each railroad's respective portion of the Geismar-Longview route mileage, the composite RCR>180 is 211 percent. The R/VC for the Geismar-Longview movement is 380 percent, which is more than 150 points higher than the R/VC>180 benchmark. The Geismar-Longview R/VC is far higher than the RCR>180 of any of the nation's Class 1 railroads.

28. The RSAM benchmark reflects the carrier's particular revenue needs by examining the average markup that the carrier might charge its potentially captive traffic

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to meet those needs. The Board's July 26, 2006 Decision in Ex Parte 646 reported that the UP's RSAM range, with and without efficiency adjustment, was 245 and 306 percent, respectively, in 2004. This range is well below the R/VC ratio of 380 percent computed by Messrs. O'Connor and Hillenbrand for the Geismar-Longview movement.

29. The GTC's RSAM range is reported as 322 to 375 percent, with and without the efficiency adjustment. These values are far greater than those for any other railroad. O'Connor and Hillenbrand demonstrate that this range is unreasonably high by reason of the inclusion of the investment in the Illinois Central ("IC") written up by CN to three times its value prior to incorporation of IC into the GTC. This issue is discussed at length in the witnesses' statement. The witnesses conclude that the GTC RSAM range is simply not credible. Instead, they recommend that the R/VC ratios of the GTC portions of the two study movements be compared with the RSAMs of the STB's Eastern Region railroads, which in 2004 were in the range of 232 to 266 percent. When this more realistic comparison is made, the 309 percent R/VC and 380 percent R/VC ratios of the two issue movements are well above the relevant RSAM range.

30. The R/VC_{comp} benchmark reflects demand-based differential pricing principles by measuring the markups applied to comparable traffic. In this case, comparable traffic would be traffic with transportation characteristics similar to the issue traffic. Williams' consultants have requested access to the costed STB waybill sample to test and validate this benchmark. The request for access to the costed STB waybill sample is in process and accordingly the results of this test are not available at this time.

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31. Although, without access to the STB waybill data, O'Connor and Hillenbrand have not been able to implement the R/VC_{COMP} measure, they note that the R/VC for all railroads for all traffic classified as chemicals is 164 percent, as computed by the STB. That R/VC percentage is the highest of any major commodity group, but it is far lower than either the 309 percent or the 380 percent R/VCs of the two movements that are the subject of this complaint.

WHEREFORE:

Williams respectfully requests

- that the STB establish a mediation period of 30 days during which it will bring together representatives of Williams and the GTC to determine whether this rate dispute can be settled through mediation;
- that if the GTC declines to participate in this mediation, or if the mediation fails to reach a successful conclusion, the STB invoke the simplified procedures that we recommend for this small shipment rate case;
- that the STB find, pursuant to those simplified procedures, that the current rates charged by the GTC for the rail shipments of propylene from Geismar, LA to Garyville, LA and from Geismar, LA to Longview, TX are unreasonable;
- that the STB find that a reasonable rate for the Geismar-Garyville movement is \$[REDACTED] exclusive of fuel surcharge, and for the Geismar-Longview movement is \$[REDACTED] per carload exclusive of fuel surcharge, as these rates provide the railroads with the same markup over variable costs as they derive from all traffic that exceeds a R/VC ratio of 180 percent;

- that the STB require the GTC to pay reparations for all overcharges on Geismar--- Garyville movement since July 1, 2006 and on the Longview shipments since April 1, 2006; and
- that the STB prohibit the railroads from increasing this rate by any percentage greater than that indicated by the Rail Cost Adjustment Factor until December 31, 2011.

Respectfully Submitted,



Charles W. King, President
Snavely King Majoros O'Connor & Lee, Inc.
Admitted to Practice, April 10, 1967
On behalf of Williams Olefins, L.L.C.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Formal Rate Complaint
And
Request for Mediation by
Williams Olefins, L.L.C.
Regarding Canadian National
Concerning the Rail Rates for Propylene
Between Geismar, LA and Longview, TX
And
Between Geismar, LA and Garyville, LA

Verified Statement of
Tom O'Connor and Kim Hillenbrand

Snavelly King Majoros O'Connor & Lee, Inc.
1111 14th Street, N.W.
Washington, D.C.

November 20, 2006

Verified Statement of Tom O'Connor and Kim Hillenbrand

1111 14th St NW ■ Washington DC 20005 ■ 202 371-9149

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Verified Statement of Tom O'Connor and Kim Hillenbrand

1111 14th St NW ■ Washington DC 20005 ■ 202 371-9149

Public Version - Redacted**I. Introduction and Summary**

Our names are Tom O'Connor and Kim Hillenbrand. We are vice president and senior analyst respectively with Snavely King Majoros O'Connor & Lee, Inc. ("Snavely King" or "SK"). Snavely King is an economic and management consulting company focusing on transportation and utilities. Snavely King has been in business for more than 36 years, serving transportation clients including railroads, shippers and government agencies, in the United States, Canada and Europe. Attachment A contains our resumes and a summary of our testimony before the Surface Transportation Board ("STB" or "the Board"), the Interstate Commerce Commission ("ICC"), as well as state courts, Federal courts and arbitration and mediation panels.

Williams Olefins, L.L.C. ("Williams") retained Snavely King to analyze the rail rates and costs on selected rail lanes. Snavely King has analyzed the lanes and we have tested the rates, costs and revenue-cost ratios (RCR or RVC) against benchmarks calculated by the STB. Snavely King has extensive experience working with Williams and has been assisting Williams for years with various rail and logistics analyses of operations in the United States and Canada.

For this assignment we supplemented our cumulated knowledge of Williams' rail operations with on site review of the Geismar operation, including first hand review of the rail, truck, barge and pipeline transportation aspects of the facility. Accordingly our analyses are based on years of analysis of Williams transportation overall, and first hand observation of the Geismar rail transportation at issue in this case.

Based on our direct observations and analyses, we find that the rail rates for propylene in tank cars on the lanes from Geismar, LA to Garyville, LA and Geismar, LA to Longview, TX are unreasonably high. The traffic on these lanes originates at Geismar, LA on the Grand Trunk Corporation ("GTC"), the American subsidiary of the Canadian National Railway. The Garyville traffic is delivered by GTC. The Longview traffic is interchanged to the Union Pacific Railroad ("UP") at Baton Rouge. The UP carries the traffic the remaining distance to Longview, TX.

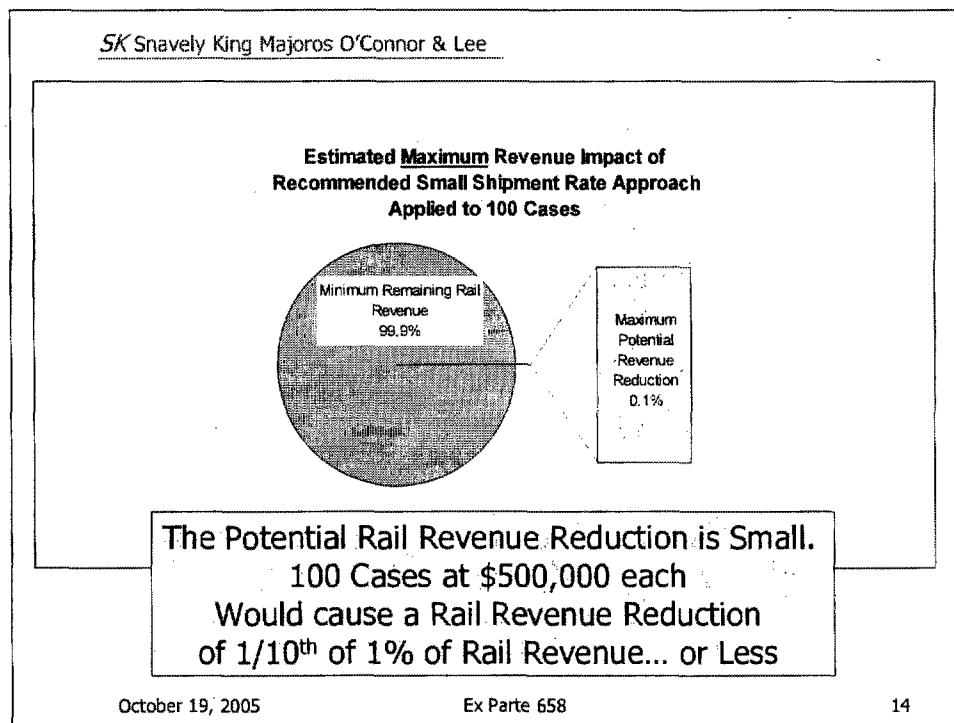
After reviewing the rate negotiation process followed by Williams and GTC, we have recommended that Williams prepare a formal rate complaint and request mediation by the STB to resolve the rate issues on these two lanes. If GTC declines to participate in a mediated solution, we have recommended that Williams file a formal rate complaint with the STB.

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In conjunction with the filing of this complaint, Williams invites GTC to pursue a mediated solution. Williams remains open to and encourages GTC to join together with Williams in a mediated solution facilitated by the STB.

The Canadian National, through its subsidiary, GTC, offers the only rail service at Williams' origin facility in Geismar and at Garyville, LA. The GTC and the UP offer the only feasible rail service connecting Williams' Geismar facility with Williams' customer in Longview, TX. Due to various impediments we discuss in this petition, other modes of transportation are either not physically available or not economically feasible or both.

We request treatment of the rate on this lane under the STB's small shipment rate reasonableness guidelines prescribed in the STB's Order in Ex Parte No. 347 (Sub-No2), *Rate Guidelines – Non-Coal Proceedings*, decided December 27, 1996 ("the 1996 Decision"). As the STB has stated, treatment as a small shipment lane is appropriate for lanes that generate a relatively small amount in potential rail revenue reductions. In prior testimony before the STB, we have suggested \$500,000 per year as a reasonable access eligibility threshold.¹ Such a threshold would prevent any possible risk of hindering revenue adequacy as the following charts, excerpted from our prior testimony, indicate:



¹ See testimony presented to the STB by Tom O'Connor in the Ex Parte 646 July 2004 hearings regarding Small Shipment rates as well as testimony in the STB Ex Parte 657 April 2005 and STB Ex Parte 658 October 2005 hearings.

Verified Statement of Tom O'Connor and Kim Hillenbrand

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Since this is only the second case brought under the Ex Parte No. 347 (Sub-No2), *Rate Guidelines – Non-Coal Proceedings* over the past ten years², at this level of frequency it would take 50 years to reach the 100 case level. An annual volume of 100 cases is very unlikely and it is even more unlikely that all 100 cases would be resolved in favor of the shipper. Even this highly improbable situation would result in a miniscule impact on the railroad industry. A hypothetical situation with 100 small shipment rate cases each improbably leading to a \$500,000 rate reduction would result in a barely discernible impact on annual rail industry revenues, as shown on the preceding chart. We previously presented to the STB both the preceding chart and the data presented on the following table.

SK Snavely King Majoros O'Connor & Lee	
Line Item Description	Rail Revenue Amounts
Total Rail Revenue as reported in STB 2002 waybill sample	\$40,880,403,000
Small Shipment Cap on Rail Revenue Reduction	\$500,000
Capped Rail Revenue Reduction on one case as percentage of Total Rail Revenue	0.001%
Capped Rail Revenue Reduction on 100 small shipment cases as percentage of Total Rail	0.1%

April 26, 2005 Ex Parte 657 23

Williams estimates that its total 2006 rail freight bills under present rates for the Geismar-Longview movement amount to approximately \$[REDACTED].³ Williams estimates that its total 2006 rail freight bills under present rates for the Geismar-

² The first, and the only other, STB small shipment rate case was brought by BP Amoco. Snavely King served as the witness on behalf of BP Amoco in that case.

³ Williams' records indicate 170 cars at \$[REDACTED] per carload, inclusive of an estimated average 11.75% fuel surcharge, for a total revenue of \$[REDACTED].

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Garyville movement amount to approximately \$[REDACTED].⁴ Clearly, no annual rail revenue reduction on these lanes will rise to even the modest level of \$500,000.

Williams requests that in the absence of a mediated settlement the STB prescribe rates that yield the same R/V/C as the respective railroads realize from all of their traffic that has an R/V/C greater than 180 percent. In its July 26, 2006 Decision in Ex Parte No. 646 (Sub No. 1) *Simplified Standards for Rail Rate Cases*, (at 24) the Board identified GTC's R/V/C>180 as 233 percent. When this ratio is applied to the variable cost of the Geismar-Garyville movement, the indicated rate is \$[REDACTED]. The current rate on this movement is \$[REDACTED] per carload, plus a fuel surcharge. At the estimated average fuel surcharge rate of 11.75 percent⁵, the fuel surcharge brings the total charges for the Geismar-Garyville movement to \$[REDACTED] per carload. In October 2006, that surcharge was 13.5 percent, bringing the total charge for this movement to \$[REDACTED].

The Board's Ex Parte No. 646 decision also identified the R/V/C>180 of the UP as 210 percent. Weighting this ratio with that of the GTC according to the proportion of the route distance hauled by the respective railroads on the Geismar-Longview movement yields a composite R/V/C>180 of 211 percent. When this ratio is applied to the variable costs for the respective railroads calculated using the Uniform Rail Costing System ("URCS"), the recommended rate for the Geismar-Longview movement is \$[REDACTED] per carload. The current rate for this movement is \$[REDACTED] per carload plus a fuel surcharge. In October 2006, that surcharge was 13.5 percent, bringing the total charge for this movement to \$[REDACTED].

Williams further requests that the Commission stay any increases in these rates in excess of the annual Rail Cost Adjustment Factors ("RCAF") for a period of five years, that is, until December 31, 2011.

The STB has a public policy mandate to "maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital"⁶

The Geismar to Longview, TX lane and Geismar to Garyville LA lanes are small shipment lanes. As summarized in the following tables, these lanes meet the criteria for access to STB small shipment rate reasonableness assistance.

⁴ Williams' records indicate 27 cars per month in 2006 at \$[REDACTED] per carload inclusive of an average 11.75% fuel surcharge. We have reduced the projected annual volume from 324 cars to 300 cars in recognition of the variance in demand at the Garyville production facility. We estimate annual rail revenue at of \$[REDACTED].

⁵ The estimated average is given by the mid point of the high and the low fuel surcharge for the September 2005 to November 2006 period.

⁶ 49 USC section 10101(6).

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**Table I. Check List of Requirements For
Securing STB Rate Reasonableness Assistance**

1. Under STB regulations (49 U.S.C. 10707(d)(1)), the reasonableness of a rate cannot be challenged if the revenues generated by that rate are less than the regulatory threshold which is a revenue-cost ratio (RCR or RVC) of 180%, that is, revenues exceed 180% of the variable costs associated with handling the traffic involved.

The Geismar-Longview lane meets this criterion. At the current tariff rate levels, the RVC for this movement is 340% with CN GTC unit costs applied to the GTC segment. When we include the average applicable CN fuel surcharge the corresponding RVC is 380% after application of an average of CN fuel Surcharges based on CN Fuel Surcharge tariff 7401.

The Geismar-Garyville lane also meets this criterion. At the current tariff rate levels, the RVC for this movement reflecting the average of single and multiple carload costs is 277% with GTC unit costs applied to the GTC haul. When we include the average CN fuel surcharge the corresponding RVC is 309% after application of an average of the CN fuel Surcharge based on CN Fuel Surcharge tariff 7401.

2. Under 49 U.S.C. 10709(c), the reasonableness of a contract rate cannot be challenged.

The Geismar-Longview and Geismar-Garyville lanes meet this criterion. The current rates are "private tariff" rates. The GTC has declined to offer or accept reasonable rates or contracts on these lane as of the filing date of this statement.

3. Rates for traffic or services that are exempted from regulation pursuant to 49 U.S.C. 10502 or its predecessor (former 49 U.S.C. 10505) are free from challenge.

The Geismar-Longview and Geismar-Garyville lanes meet this criterion.

4. The qualitative market dominance limitation of 49 U.S.C. 10707(a)-(b) rules out traffic with access to effective transportation competition.

The Geismar-Longview and Geismar-Garyville lanes meet this criterion. Williams' Geismar Olefins plant has no facilities for loading propylene onto trucks, and its customer at Longview would not accept deliveries by truck. The Williams Geismar facility does not have access to propylene barge transportation. There is no pipeline access to the customer at Garyville. There is inadequate pipeline capacity to serve the requirement at Longview.

5. The grandfather provision of section 229 of the Staggers Act conferred regulatory immunity upon the rate levels that were in place at that time and not successfully challenged by a certain date.

The Geismar-Longview and Geismar-Garyville lanes meet this criterion. The current rates were applied in 2006.

Public Version - Redacted**II. Analysis of Geismar-Longview and Geismar-Garyville Lanes**

Williams has consistently sought to negotiate reasonable rates with GTC on all of its Geismar lanes. This effort involved staff level and high level meetings between Williams and GTC and CN. The absence of a satisfactory response to the Williams' efforts at negotiations has brought the parties to a point of impasse. To resolve this impasse Snavely King has recommended requesting STB mediation.

Snavely King performed cost analyses of the Garyville and Longview lanes and has compared the variable costs with Williams' current rates. We have concluded that the current rates are unreasonably high under standards proposed in the Board's 1996 Decision.

We costed these lanes using parameters reflecting Williams's actual propylene rail shipments. The car type is a tank car costed at a loaded cargo weight of 70 tons. This produces a conservative estimate of the costs, since it is heavier than the observed loaded actual weight of 61 to 65 tons.⁷

The Longview lane is routed as a GTC-UP interline movement with a loaded distance of 316 miles. The GTC handles the Longview traffic over 20 miles of its track to Baton Rouge, LA where it is interchanged to the UP for the remaining 296 miles. STCC 2912128 was used as the commodity code for propylene. The current private tariff rate of \$[REDACTED] per carload became effective April 1, 2006.

Snavely King has analyzed the outbound waybills for the year 2006 through the month of August. The Geismar-Longview volumes are based on an annual volume commitment by Williams to the Longview customer. As of the end of July 2006, Williams had shipped 98 cars to this customer, from which we estimated total shipments for the year of 170 cars.

The Geismar-Garyville volumes vary from month to month. We observed an average volume of 27 carloads per month through July 2006, from which we estimated total shipments for the year of 324 cars. We reduced this estimate to 300 cars reflecting variance in monthly demand.

Tom O'Connor reviewed Williams' Geismar operation on site, including direct observation of the rail operation.⁸ The Geismar plant has no facilities for loading propylene onto highway vehicles. Moreover, Williams reports, through their

⁷ Williams provided bills of lading which we used to compute the actual cargo weight.

⁸ Attachment B provides charts, photographs and explanations taken by Tom O'Connor during his on site review of the Geismar location, its rail layout and rail operations.

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transportation personnel, that Williams' customers would not accept propylene in trucks. Although Geismar is located on the Mississippi River, the Williams plant does not have access to propylene barge loading facilities. The capability to ship by pipeline is totally inadequate to meet the requirements of the Longview customer and the Garyville destination does not have pipeline access. Williams' Longview and Garyville shipments are dependent on rail transportation.

There are three manufacturing facilities at the Geismar location; Honeywell, PPG and Williams Olefins, LLC. All three companies are dependent on the GTC for a connection to the rail transportation network. However all three entities employ independent contractors to receive rail cars and to handle switching, distribution and reassembly of blocks of rail cars within the industrial Geismar compound⁹.

The Williams loading racks are served by Honeywell crews and locomotives. No GTC crews or locomotives enter into or work within the industrial compound. As a result, GTC drops off inbound cars and pulls the outbound cars for all three facilities as multiple carload shipments. All of GTC's Geismar activity involves multiple car lots of up to several dozen cars daily.

Snavely King also analyzed the inbound traffic data at Williams' customers' locations at Longview. Longview receives multiple carloads ranging from 2 cars to as many as 12 cars at a time. The Garyville and Longview cars are received from and handed off to GTC at Geismar in blocks of six carloads or more. At Garyville the cars are typically delivered in blocks of less than six cars.

Based on the on site observations and analyses of records Snavely King ran cost analyses using the Uniform Rail Costing System (URCS) for both single carload and multiple car movements between Geismar and Longview and between Geismar and Garyville.

Since Williams, through its contracted Honeywell crews, spots and picks up all of the cars for the GTC, we removed the industry switch cost from the cost produced by the unadjusted URCS Phase III output. To account for cost incurred by GTC for moving the Williams' cars from train to train at origin, we added an additional Intertrain and Intratrain ("I&I") switch cost derived from the unadjusted URCS unit cost calculations.

We based this analysis on two sets of data, the unadjusted URCS costs specific to the railroads involved (GTC and UP). The cost data are for 2005 indexed to 2006 cost levels using the Rail Cost Adjustment Factors (RCAF) published by the STB.

⁹ The attachments to this verified statement include charts and photographs describing the rail operations at Geismar.

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For the Geismar-Longview lane, the resulting cost is \$[REDACTED] per carload using railroad-specific costs and multiple carload shipment sizes.

When these costs are compared with the current rates on these lanes, the resulting revenue-to-cost (RCR or R/VC) ratios are unreasonably high. The Geismar-Longview rate is \$[REDACTED] per carload to which must be added a fuel surcharge. At an estimated average fuel surcharge rate of 11.75 percent, the fuel surcharge raises the total charge for the Geismar-Longview movement to \$2,498. This rate generates an R/VC of 380 percent using railroad-specific costs.

For the Geismar-Garyville lane, the resulting cost is \$[REDACTED] per carload using railroad-specific costs and single carload shipment sizes. For the Geismar-Garyville lane, the cost is \$[REDACTED] per carload using railroad-specific costs and multiple carload shipment sizes. Since this movement originates in multiple cars and terminates as single carloads or in blocks less than six cars, the appropriate cost for the entire movement is an average of the single and multiple car costs. This average is \$[REDACTED] for GTC specific costs.

When these costs are compared with the current rates on these lanes, the resulting R/VC ratios are unreasonably high. The Geismar-Garyville rate is \$[REDACTED] per carload, to which must be added the fuel surcharge. At the estimated average rate of 11.75 percent, the surcharge raises the total rail rate charged for the movement to \$[REDACTED]. This charge generates an R/VC of 309 percent using railroad-specific URCS costs.

III. Comparison with the 1996 Decision Benchmarks

The 1996 Decision identifies three revenue to variable cost benchmarks against which R/VCs of the study traffic may be compared to determine the reasonableness of the rate:

- The revenue-to-variable cost (R/VC) ratios for all traffic exceeding 180 R/VC ("R/VC>180"),
- The Revenue Shortfall Allocation Method ("RSAM"), which is the R/VC required to cover all of the railroad's overheads, and
- The R/VC ratios of comparable traffic ("R/VC_{Comp}").

We found that the rates on both the Geismar lanes are unreasonably high in terms of these tests.

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The R/VC>180 benchmark reflects the actual average markup that the carrier charges on traffic with R/VC above 180 percent. The R/VC>180 benchmark tests whether the traffic at issue bears a disproportionate share of the carrier's revenues by examining the markups applied by the carrier to its other potentially captive traffic. The following is a summary of the R/VC>180 benchmarks for the Class 1 railroads for the year 2004 as presented in the Commission's July 26, 2006 Decision in Ex Parte 646 (Sub No. 1).

Table II
R/VC>180 Percentages 2004
Actual Average Mark-up Percentages for Traffic Above 180% R/VC

Railroad	R/VC >180
BNSF	234
CSXT	197
GTC	233
KCS	259
NS	212
SOO	261
UP	210

The 2004 R/VC>180 markup for the GTC was 233 percent, and the UP's R/VC>180 was 210 percent. When these two benchmarks are weighted by the proportion of miles hauled by the respective railroads on the Geismar-Longview lane, the composite R/VC>180 is 211 percent. The Geismar-Longview railroad-specific R/VC of 380 percent is over 150 points higher than the railroads' composite R/VC>180 average. Moreover, the 380 percent R/VC for the movement is substantially higher than the R/VC>180 benchmark of any Class 1 railroad in the country.

The RSAM benchmark reflects the carrier's particular revenue needs by examining the average markup that the carrier might charge its potentially captive traffic to meet those needs. The following table summarizes the 2004 RSAMs for the Class 1 railroads:

Table III
RSAM Mark-up Percentages, 2004
(Range Represents RSAM With & Without Efficiency Adjustment)

Railroad	RSAM Range
BNSF	215-266
CSXT	254-292
GTC	322-375
KCS	241-298
NS	197-226
SOO	234-331
UP	245-306

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The 380 percent RVC for the Geismar-Longview movement is well above the UP's range of RSAMs, and it is above the range for every other railroad even the GTC.

The 309 percent RVC for the Geismar-Garyville movement is well above the range of most RSAMs. The GTC RSAM stands out as extraordinarily and unreasonably high.

The unacceptable level of GTC's RSAM is shown by the fact that the bottom of the GTC's RSAM range is higher than the top of the RSAM range of every other Class 1 railroad, except the Soo.

The very high GTC RSAM range is the result of a procedure which Snavely King has previously challenged in filings before the Board. Sections VI, VII and VIII of this statement describe this challenge. As discussed in those sections, the very high RSAM for GTC results from the incorporation of the write up of the sale value of the Illinois Central ("IC") into the investment base used to calculate the GTC's RSAM.

This write up sale value is approximately three times the pre-existing investment value of the IC's assets. This sudden and unprecedented inflation in investment valuation, while possibly appropriate for some calculations, is altogether inappropriate for purposes of testing the reasonableness of small shipment rates.

The following charts present the existing RVC's on these two lanes in comparison to rate reasonableness thresholds computed under a series of alternative operating conditions. We use the Eastern Region RSAM values as computed by the STB rather than the anomalous, unreasonable and, we believe incorrect GTC RSAM values.

The Eastern Region RSAM range for 2004 is 232 to 266 percent, well below the RVC on the Garyville lane. Weighting the 2004 Eastern Region RSAM and UP RSAM by the GTC and UP proportions of the mileage on the Longview lane produces the following RSAM range:

East +UP Composite RSAM	
Adjusted	Unadjusted
244	303

Again these RSAM's are well below the RVC of the Longview lane. As the preceding RSAM data and charts show, both the Garyville and the Longview lanes have unreasonably high rates.

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The R/VC_{comp} benchmark reflects demand-based differential pricing principles by measuring the markups applied to comparable traffic. In this case, comparable traffic would be Olefins traffic with transportation characteristics similar to the issue traffic. SK has requested access to the costed STB waybill sample to test and validate this benchmark.

Although we have not been able to implement the R/VC_{comp} benchmark, we note that the R/VC for all chemicals traffic for all railroads was 164 percent in 2004.¹⁰ This was the highest R/VC of any of the major commodity groups. It is nonetheless about half the level of the R/VC s of the two movements at issue in this complaint.

IV. The Role of the Surface Transportation Board

In the course of conducting rail negotiations, SK occasionally encounters a bargaining impasse such as has occurred with respect to Williams' Geismar movements. We see a mutually beneficial role for STB mediation in resolving rate reasonableness issues related to such impasses.

We see STB mediation as a means of ensuring that the agreement is designed to protect and advance the interests of both parties. Involvement of the Surface Transportation Board as a mediator can help establish processes that can transform conflict resolution into productive teamwork, and convert friction into momentum.

We note that the relevant regulations and statutes focus on small shipments, not small shippers. In captive situations where effective transportation competition is unavailable, we have found little difference between small and large shippers. Regardless of the size of the company, the captive shipper generally pays much higher rates for the same or similar commodity than when effective transportation competition is available. The STB recognizes that "...one of the main reasons the Board exists is to provide a regulatory backstop to assess the reasonableness of rates charged to captive shippers when those customers and their railroads are unable to successfully negotiate a contract for the transportation and to redress unreasonable rates."¹¹

Resolving impasse situations benefits both shippers and railroads. That is because the present rates may result in adverse outcomes for all involved parties: railroads, shippers and their mutual customers. For example,

¹⁰ Surface Transportation Board, 2004 Waybill Sample.

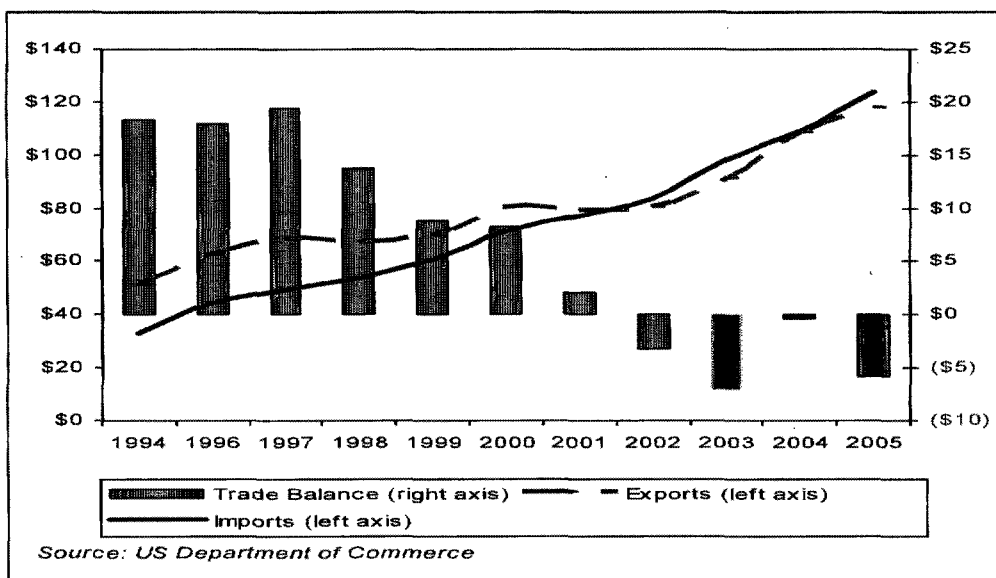
¹¹ Testimony of Roger Nober Former Chairman of the Surface Transportation Board at House Committee Transportation and Infrastructure Subcommittee on Railroads Hearing on the Status of Railroad Economic Regulation; March 31, 2004.

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unreasonably high rails rates may contribute to or cause an overseas shift of domestic chemical production. Such as shown in the following chart.

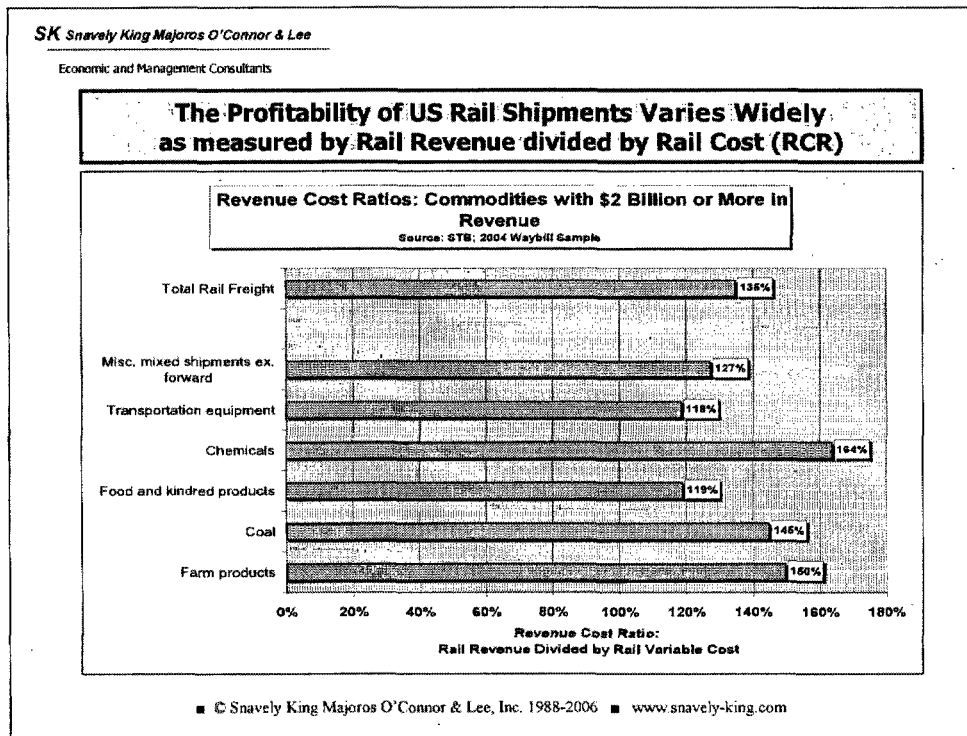
Such a shift results in loss of income in the U.S. to the producer, the producer's customer and the railroad. If portions of that overseas production are imported into the United States, the rail transportation is much more likely to be lower-rated Intermodal freight rather than high-rated rail carload freight.

Trade in Chemicals, Imports, Exports and Trade Balance



The STB waybill sample data reported in the following chart shows markedly lower Revenue/Variable Cost ratios (R/VC or RCR) for intermodal rail freight and for freight overall, compared to chemical carload freight.

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We see mediation as most effective when it is both voluntary and binding. While we do not recommend foregoing all avenues of appeal; we suggest that the parties undertake a good faith effort to find a solution through mediation. We urge the GTC to join Williams in requesting and using STB mediation to resolve the negotiations impasse on the Geismar lanes.

IV. Conclusion

For many shippers, the costs of developing and presenting a stand alone cost case are uneconomic given the traffic volume at issue¹². For small shipments like the Geismar-Longview lane, and the Geismar to Garyville lane this is the case. Nevertheless, the small volumes are important to the shipper and also to

¹² The STB's Stand Alone Cost methodology is widely perceived as providing limited assistance in resolving rate reasonableness issues for coal and grain shipments. SAC provides no assistance in resolving rate reasonableness issues for the vast majority of other rail shipments, including the small shipments on this lanes. The STB's "stand-alone cost" ("SAC") test seeks to determine the lowest cost at which a hypothetical, efficient, "stand-alone railroad" ("SARR") could provide the transportation service needed by a complaining shipper. Under the SAC test, the complaining shipper designs a hypothetical railroad specifically tailored to serve its needs and the needs of other traffic it designates. The costs of building and operating such an efficient SARR are then compared to the revenues that such a system could expect to earn. If the involved shipper demonstrates that the SARR would earn more than necessary to cover all of its costs (including a reasonable return on investment), the shipper is entitled to rate relief.

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the railroad. Negotiations facilitated by STB mediation can benefit both railroad and shipper, as the BP Amoco - NS small shipment cases demonstrated.¹³

We note that large shippers often have lanes with low shipment volumes, lack of rail or other transportation competition, and high revenue-cost ratios. Such lanes qualify for the small shipment rate case procedures. The Geismar-Longview and Geismar-Garyville lanes are examples of the inability of a large shipper to extract itself from the commercial constraints of rail captivity.

Any resulting rail revenue reductions would likely be offset in whole or in part by additional revenue as shippers regain confidence in rail. That is definitely the situation on the Geismar lanes. The negotiations impasse has challenged a long standing commercial relationship between GTC and Williams. Williams seeks the assistance of the STB in resolving this impasse. The availability of the recommended and requested access to mediation could benefit all parties and can enhance rail revenue adequacy by leading to net gains in profitable rail traffic, offsetting losses such as have been experienced through overseas shifts of chemical production.

Should the mediation option fail to produce a mutually agreed solution, we resubmit this issue as a small shipment rate case under the existing guidelines as of the date of this filing.

¹³ Snavely King appeared on behalf of BP Amoco in the first small shipment rate case.

□ VERIFICATION

We, Tom O'Connor, and Kim Hillenbrand declare that the foregoing statement is true and correct and was prepared by us or at our direction. Further, we certify that we are qualified and authorized to file this statement.

Executed on November 20, 2006.

Tom O'Connor

Tom O'Connor

[Signature]

Kim Hillenbrand

Subscribed and sworn to before me this 20th day of November 2006 in the District of Columbia.

Angel J. Smith

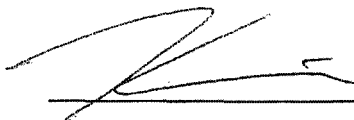
Notary Public

My Commission expires: March 14, 2011

□ **Certificate of Service**

I certify that this filing was served this day on all parties by FedEx or more expeditious method of delivery.

November 22, 2006.



Kim Hillenbrand

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V. Attachments and Workpapers

Public Version - Redacted**A. Resumes of Tom O'Connor and Kim Hillenbrand****Tom O'Connor****Snavely King Majoros O'Connor & Lee, Inc., Washington, DC**

- **Vice President (1988-Present)**

Mr. O'Connor has more than twenty-five years experience in business and economic analysis. His experience includes key and increasingly responsible management and policy positions with government agencies and private industry.

Mr. O'Connor has authored a series of guidelines on transportation negotiations and contracting and has conducted transportation negotiations and contracting seminars for a wide range of clients. Mr. O'Connor has also designed and helped lead transportation contract negotiations resulting in tens of millions in cost savings.

Mr. O'Connor has also appeared as an expert witness in successful Stand Alone Cost (SAC) transportation rate litigation, achieving millions of dollars in savings for the client.

He has also created and managed numerous computerized transportation management and regulatory systems to address complex problems and is a widely recognized expert on costing and economics.

He has conducted extensive analyses of truck transportation as well as analyses of tug and barge operations, both inland and off shore, for private sector clients.

Mr. O'Connor has conducted analyses for the Government of Canada used to shape policy for freight transportation and studies for the U.S. Government used to shape Freight and Passenger transport Policy.

For the Government of Bulgaria, in the Balkans, he developed the Master Plan for Management Information Systems, including telecom and computer facilities designed to operate, measure, manage and monitor both rail freight and rail passenger operations of the Bulgarian State Railways, in Bulgaria and the Balkan peninsula.

Mr. O'Connor has analyzed more than 45 rail merger scenarios and cases. He has provided expert testimony before state and federal courts and commissions in the U.S. and Canada on economic and policy issues. He has also testified as

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an expert on computerized transportation analytical systems, rail operations, anti trust issues and transportation economics and costing. Mr. O'Connor has served as an impartial and expert monitor of data and processes at issue in litigation on transportation.

Mr. O'Connor has also conducted management audits, focused on identifying the cause and effect relationships underlying claimed cost incidence. The management audits were directed toward testing the cost basis of claims asserted by major railroads.

His experience in telecoms spans the period since 1995. During this period, on a succession of government and commercial projects, Mr. O'Connor directed and participated in the review, design and operation of telecoms systems.

He also designed and developed the business and operations plan for an Eastern European telecoms startup company, BDZCOM. Mr. O'Connor designed and presented the plan and conducted liaison with international commercial, banking and government interests in the United States and Europe.

DNS Associates Inc., Washington, DC

- **Vice President (1982 - 1988)**

Mr. O'Connor directed and participated in numerous projects including merger analyses, transportation infrastructure analyses, plant and network rationalization and feasibility studies.

He designed and implemented mainframe and microcomputerized systems for analyzing rail, truck load, LTL and barge logistics. The computerized cost systems Mr. O'Connor created gained widespread use throughout the United States and Canada.

Mr. O'Connor also advised the U.S. Rail Accounting Principles Board on the costing aspects of regulatory reform policies. He provided expert testimony on coal rates, computerized data bases and cost systems and rail cost issues before the Interstate Commerce Commission.

Association of American Railroads, Washington, DC

- **Assistant Vice President, Economics (1979 - 1982)**

Managing a large staff of professionals, Mr. O'Connor designed and managed major economic analysis projects. He helped formulate industry economic policy positions culminating in the Staggers Rail Act of 1980. He submitted expert testimony on behalf of the railroad industry in numerous cases before the

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Interstate Commerce Commission and state regulatory commissions. He also appeared regularly in national forums on economic issues.

Mr. O'Connor directed the most significant computerized industry Costing System project in 40 years, URCS, the cost system now used by all major US railroads. He also conducted industry seminars on URCS and related economic issues.

Mr. O'Connor also testified before the Interstate Commerce Commission on the design and application of this pathbreaking rail cost system since adopted by the Commission and the rail industry.

He also directed development and installation of a commercial computerized economic and market analysis system now used by virtually all major US railroads.

Consolidated Rail Corporation, PA

- **Assistant Director, Cost & Economics (1977 - 1979)**

Managing a staff of about 30 professionals, Mr. O'Connor was responsible for all Conrail management and regulatory cost analyses in both freight and passenger areas. He testified before the ICC on the development of subsidy standards now widely used in the US railroad industry.

He also finalized the design, installed and managed Contribution Simulator and Calculator (COSAC), a computerized internal management economic analysis system at Conrail. The COSAC system uses specific management accounting data to develop economic costs. COSAC replaced earlier systems and was used to guide virtually all transportation management decisions, including service design, equipment acquisition, strategic initiatives, line abandonments and service discontinuance.

Mr. O'Connor also participated in cost allocation negotiations between Amtrak and Conrail on cost sharing of joint facilities on the North East corridor. He initiated and directed profit maximization and plant rationalization programs. He also designed and implemented computerization and improvement of a wide range of economic and cost analysis systems used to manage and turn around this multi-billion dollar corporation.

R.L. Banks & Associates Inc., Washington, DC

- **Consultant (1976 - 1977)**

Mr. O'Connor conducted and directed numerous transportation- related projects in the U.S. and Canada ranging from national logistics analyses to site-specific

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studies. He specialized in costing systems and appeared as an expert witness on such systems in a precedent setting proceeding before a Canadian Crown Commission.

U.S. Railway Association, Washington, DC

- **Manager, Local Rail Service Planning (1974 - 1976)**

In a project of unprecedented scope and historic implications, Mr. O'Connor developed, computerized, and implemented the light density lines cost analysis system, which defined Conrail. This system was used to reach line service decisions for thousands of miles of track, including service throughout New York. He served as liaison with congressional staffs and shipper groups, as well as federal, state, and local governments, and planning agencies. The system he created was a major element in the design and implementation of the streamlined Midwest-Northeast regional rail system. After leaving USRA, Mr. O'Connor subsequently was called back to appear as an expert witness to present and defend the operation of the USRA costing system.

Interstate Commerce Commission,

- **Economist, Washington, DC (1973-1974)**

Mr. O'Connor served as a staff economist and authored a report analyzing industry investment patterns and ICC regulatory policy, including ICC use of cost evidence.

Education

- University of Massachusetts, Amherst, B.A. Economics
- University of Wisconsin, Graduate Course Work, Economics
- University of Delaware, Graduate Course Work, Business Management
- The American University, Graduate Course Work, Computer Science

Professional Organizations

- Transportation Research Board
 - Past Chairman of the Transportation Regulation Committee
- Transportation Research Forum
 - Past President of the Cost Analysis Chapter
- National Defense Transportation Association
 - Past Member of Board of Directors, National Capital Chapter

Academic honors

- Phi Kappa Phi academic honors society
- Phi Beta Kappa academic honors society

Military

- U.S. Army; Sergeant, Combat Engineers

Security Clearance

- Secret

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Summary of Expert Testimony

Of

**Tom O'Connor
Vice President**

Snavely King Majoros O'Connor & Lee, Inc.

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Tom O'Connor is Vice-President of Snavely King Majoros O'Connor & Lee (Snavely King), an economic and management consulting company. He has been engaged in the business of economic analysis for more than thirty years, beginning in 1973 as an economist with the Interstate Commerce Commission (now the Surface transportation Board) and later in economic consulting and management positions of increasing responsibility with the United States Railway Association, Conrail, the Association of American Railroads and, from 1982 through 1988 with DNS, Associates and since 1988 with Snavely King Majoros O'Connor & Lee, (Snavely King), an economic and management consulting company focusing on telecommunications and transportation. Mr. O'Connor was Vice President and principal at DNS Associates and has been Vice President and principal of Snavely King since joining the firm in 1988.

He has provided testimony in a number of proceedings before courts and regulatory commissions in the United States and Canada including:

- Interstate Commerce Commission,
- Surface Transportation Board,
- United States Railway Association,
- Regulatory Commission in Indiana,
- Regulatory Commission in New York,
- Regulatory Commission in Pennsylvania,
- State Court in Indiana,
- State Court in Montana,
- State Court in Virginia,
- Arbitration Panel in New York
- Mediation Panel in Massachusetts
- Mediation Panel in Washington
- Canadian Crown Commission.
- US District Court for Eastern District of Virginia,
- US District Court for Arizona

Tom O'Connor's practice centers on transportation with specific focus on litigation, negotiations and infrastructure issues including rationalization and redesign of the railroad infrastructure in the US as well as rebuilding of the railway infrastructure in Eastern Europe. Mr. O'Connor's work in Eastern Europe focused on both transportation and telecommunications.

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Tom O'Connor Testimony in Federal Regulatory Cases

- **The comparative merits of the Interstate Commerce Commission's Uniform Rail Costing System (URCS) and Cost Center Accounting** submitted to the ICC on behalf of the US Railroad industry in February 1980 in Docket No. 37203.
- **The economics and computer technology of the Light Density Line Methodology used to define Conrail**, submitted to USRA before a special hearing in 1980.
- **Computerized transportation database design and use.** Verified statement was submitted to ICC on behalf of the US Railroad industry in Nov 1980 in Ex Parte No. 385.
- **The comparative merits of two regulatory rail-costing systems, URCS and Rail Form A**, submitted to the ICC on behalf of the US Railroad industry in March 1981, in Ex Parte 399.
- **Testimony on the Preliminary 1979 Rail Cost Study as released by the ICC, calling for adopting and improving URCS.** This was submitted to the ICC on behalf of the US Railroad industry in Docket No. 37203 in February 1982.
- **Rail costing using Rail Form a costs applied to service units generated by a computerized rail network model.** This verified statement was submitted to the ICC on behalf of a shipper located in Nevada in July 1985 in ICC Docket Nos. 37809 and 37815S.
- **Rail costing, also using Rail Form A costs applied to service units generated by computerized network model.** This verified statement was submitted to ICC on behalf of a shipper located in Nevada in November, 1986 in Docket No. 37809, 37815S.
- **Stand Alone Rail Costing, for use in rate reasonableness, using service units developed with a series of computerized network model.** This verified statement was submitted to the ICC on behalf of the Association of American Railroads in September, 1988 in Docket No. 38239S
- **Rail merger conditions, developed using rail costs and a computerized network model.** This verified statement was

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submitted to the ICC in March 1994 in Finance Docket No. 21215 (Sub. No. 5)

- **The effects of computerized methods on rail operations and costs.** This verified statement was submitted to the ICC on behalf of Coletto Creek Utility in July 1994 in Docket No. 41242.
- **The cost of rail coal transportation using URCS costs and A Stand Alone Network.** This verified statement was submitted to the ICC on behalf of West Texas Utilities in April 1995 in Docket No. 41191.
- **Further testimony on the cost of rail coal transportation using URCS costs and a Stand Alone Network.** This verified statement was submitted to the ICC on behalf of West Texas Utilities in July 1995 in Docket No. 41191.
- **Oral Argument on the effects of the BN-SF merger on rail costs and service presented before the full Commission** in August, 1995 on behalf of Universal Forest Products in Finance Docket No. 32549.
- **The effects of the UP-SP merger on costs, infrastructure and operations.** Verified statement was submitted to ICC on Behalf of Kansas City Southern Railroad in March 1996 in Finance Docket No. 32760.
- **Competitive truck transportation market.** Joint Verified Statement with James Wells was submitted to Surface Transportation Board (STB) on behalf of TJ MAXX on June 22, 1998 in Docket No. 41192
- **The investment plans of UP-SP to remedy effects of the UP-SP merger.** Verified statement was submitted to STB on Behalf of Kansas City Southern Railroad in June, 1998 in Finance Docket No. 32760 UP-SP Merger Oversight Proceeding
- **The Arkansas and Missouri Railroad Request For Discontinuance Waiver** Filed on Behalf of Kansas City Southern Railroad. Verified statement was submitted to Surface Transportation Board (STB) in November 1998 in Finance Docket No. 32670.
- **Further testimony on the competitive truck transportation market.** Joint Verified Statement with James Wells was submitted to Surface

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Transportation Board (STB) on behalf of TJMAXX in January, 1999 in Docket No. 41192

- **Rail Merger Guidelines to develop new and improved merger analysis processes.** Verified statements were submitted to Surface Transportation Board (STB) on behalf of OxyChem, Oxy Vinyls, BASF and Williams Energy Services in May 2000 in Ex Parte 582.
- **Reply Testimony on Rail Merger Guidelines to develop new and improved merger analysis processes.** Reply Verified statements were submitted to Surface Transportation Board (STB) on behalf of OxyChem, Oxy Vinyls, BASF and Williams Energy Services in June 2000 in Ex Parte 582.
- **Testimony on Rail Costs and Rates.** Verified statement was submitted to Surface Transportation Board (STB) on behalf of Peabody Energy Company June 2003 in Docket 42077.
- **Testimony on Rail Costs and Rates.** Verified statement was submitted to Surface Transportation Board (STB) June 2004 in Ex Parte 646.
- **Testimony on Rail Costs and Rates.** Oral testimony was presented to Surface Transportation Board (STB) July 2004 in Ex Parte 646.
- **Testimony on Rail Costs and Rates.** Written and Oral testimony was presented to Surface Transportation Board (STB) May and June 2005 on behalf of BP Amoco in STB Docket NOR 42093, the first ever small shipment rate case brought before the STB.

Tom O'Connor -- State, Regional and Canadian Testimony

- **Expert Testimony Centering On Transportation Rates And Costs for transportation of Medicaid passengers.** This testimony involved research and development of computerized cost and rate analyses for medical passenger transportation service within Indiana. The evidence focuses on developing compensatory rates meeting market conditions and regulatory review. This evidence was developed and submitted on behalf of Medicaid transportation providers in September, 2005 with oral testimony at deposition in October 2005. The case was adjudicated in Superior Court, Marion County, Indiana. The court adopted the rates we proposed, deciding in favor of the Medicaid transportation providers in November, 2005.

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- **Expert Testimony Centering On Transportation Rates And Costs And The Implications For Antitrust Matters.** This testimony involved research and development of computerized cost and rate analyses for rail and truck service to Arizona and surrounding areas. The evidence is focuses on resolving antitrust allegations regarding certain construction materials. This evidence was developed and submitted on behalf of Solcon in May, 2003 with oral testimony at deposition in 2003. The case was under adjudication as Case No. CIV 01 01269 PHX ROS, United States District Court for the District of Arizona and has been settled.
- **Expert Testimony Centering On Commuter Railroad Operations And Costs.** This testimony involved design and development of computerized costing models of commuter rail operations. The evidence was central to arbitration to resolve subsidy disputes between New York and Connecticut. This evidence was developed and submitted on behalf of Metro North Commuter Railroad in August 1996 with oral testimony presented in February 1997. The case was decided successfully in favor of the client.
- **Expert testimony centering on the effects of a series of explosions on transportation operations and costs.** This was submitted on behalf of Washington Construction Company in a damages case filed by Burlington Northern Railroad in state court in Montana, First Judicial District Court, and Cause Number ADV 91-1885. The case went to a jury trial and was decided successfully in favor of the client in September 1993.
- **Expert testimony centering on computerized network models.** This was submitted in an antitrust case filed on behalf of Geoplex in U.S. District Court for the Eastern District of Virginia, Geoplex Corporation v. CACI, Inc. Civil Action No. 89-610-A. This evidence was developed and submitted in November 1989.
- **Expert testimony centering on transportation operations and costs.** This was submitted on behalf of the Canadian provinces of Alberta, Manitoba and Saskatchewan before a Canadian Crown Commission in a series of hearings held in Winnipeg, Manitoba and Regina, Saskatchewan in 1976. This led to an historic change in Canadian transportation regulation.
- In addition to these cases, while AVP of Economics at the AAR Mr. O'Connor submitted testimony on rail costs and operations on behalf of the rail industry before State regulatory commissions in Indiana, Pennsylvania and New York.

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Public Version - Redacted**Kim Hillenbrand****Snavely King Majoros
O'Connor &
Lee Inc
Washington, DC*****Analyst, Transportation (2003 to Present)***

Mr. Hillenbrand provides analytical support to Snavely King's clients and senior consultants. His responsibilities include cost modeling, operations simulation, financial analysis and reporting, database management and research. Mr. Hillenbrand's work has primarily been in Snavely King's transportation group. His projects have included extensive cost and revenue analyses of rail freight movements, along with preparation of databases for use in rate negotiations with railroads. Mr. Hillenbrand has prepared action plans and presentations for clients including potential merger analyses, plant site locations, and rail service issues.

Mr. Hillenbrand also conducts research in the chemical, petroleum and transportation industries. Mr. Hillenbrand has assisted in the preparation of presentations and testimony before the Surface Transportation Board, and Mr. Hillenbrand has assisted in the marketing of Snavely King services to potential clients.

**Leventhal Seneter & Lerman PLLC,
Washington DC*****Legal Assistant (Spring 2003)***

Mr. Hillenbrand assisted in the migration of Televisa's patent and trademark portfolio from Leventhal Seneter & Lerman to Televisa's in

house counsel. Mr. Hillenbrand managed the distribution of incoming documents including from EEO and FCC filings from clients and assisted in all aspects of LS & L's broadcasting, media, and satellite practices.

**Skadden, Arps, Slate, Meagher &
Flom LLP,
Washington DC*****Legal Assistant (2002)***

While contracted with Skadden Arps, Mr. Hillenbrand assisted in a wide range of legal work. Mr. Hillenbrand coordinated a 750,000 page document production and privilege log for a Department of Justice antitrust filing for the Northrop Grumman-TRW merger. He also compiled and managed privilege logs and prepared document productions on behalf of clients for SEC investigations. Mr. Hillenbrand conducted first review of client documents for SEC and Congressional investigations.

**North American Securities
Administrators
Association (NASAA), Washington
DC*****Legal Assistant (Spring 2002)***

Mr. Hillenbrand assisted in a wide area for projects for NASAA. He assisted state security regulators in the first settlement between New York State and Merrill Lynch regarding conflict of interest between their research groups and investment banking groups. Mr. Hillenbrand conducted verification and complaint checks of stockbrokers and Certified Financial Advisors for investors and answered questions regarding the Series 6 and 63 Exams.

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Acsys, Inc (2003)

Washington DC

Law Resources (2001-2003)

Mr. Hillenbrand provided temporary work for law, financial, and real-estate firms.

RVC (formerly Reuters Venture Capital)

London, England

Analyst, Intern (2000)

Mr. Hillenbrand assisted on a survey of Asia venture capital markets in preparation for future venture capital and fund of fund investments in the region. The survey comprised of an analysis of sources of capital, major investors, and destinations of capital in Asia.

Education

Connecticut College, 2001

B.A. Economics

B.A. International Relations

Georgetown University, Summer 1999

Summer Course Work

Citizenship

United States

United Kingdom

B. On Site Observations at Williams' Geismar Facility

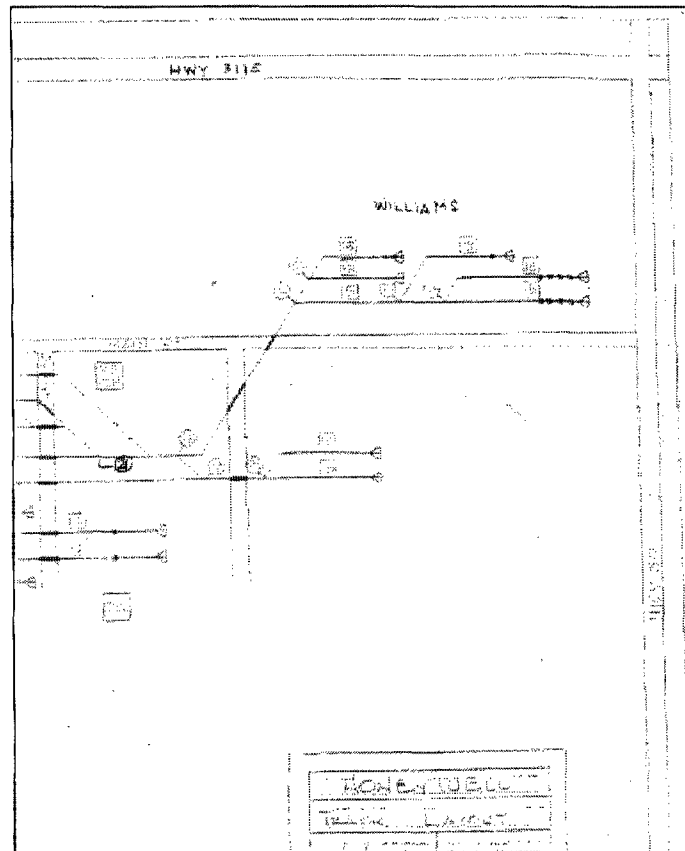
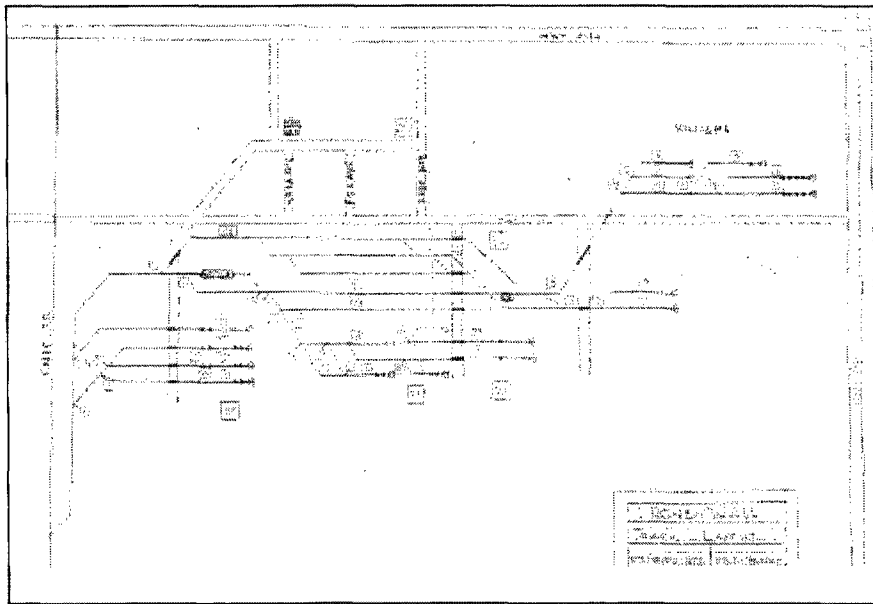
As preparation for this filing, Snavely King conducted on-site observation of the Williams Olefins operations at Geismar. The Geismar area and the plant's rail operations are shown in the following diagrams and photographs. Snavely King reflected these direct on site observations of the rail operating situation in our cost analysis.



The Williams location within the Geismar plant complex is located immediately southeast of the intersection of Highway 3115 and Highway 30 in the preceding aerial photograph. The Geismar plant complex is shared by Honeywell, PPG and Williams as shown in the following charts:

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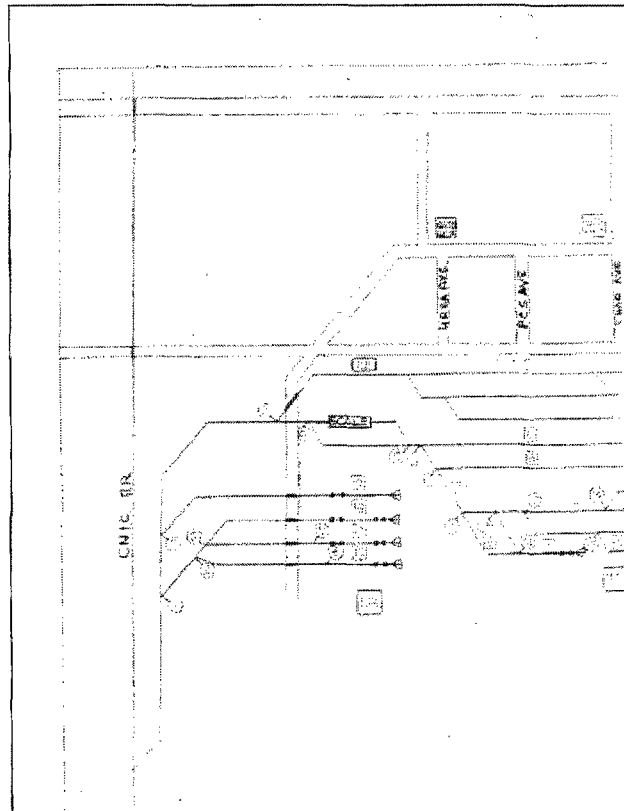
The preceding two plant diagrams can be correlated to the aerial photography of the Geismar area. The intersection of Highway 30 and Highway 3115 shows in both. This identifies the location of the Williams Olefins, LLC area within the overall plant complex shared by Williams, PPG and Honeywell. Within the

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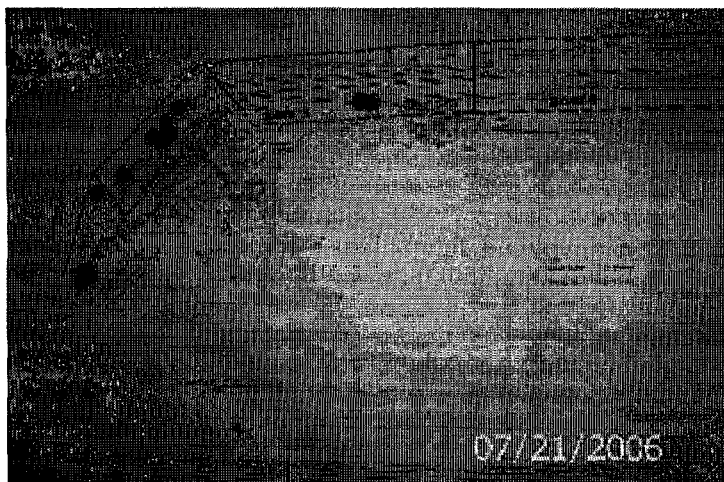
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Geismar plant complex Williams loading racks are located at the most distant point from GTC track and are served exclusively by Honeywell locomotives and crews.

The following diagram shows the interchange site between GTC and Honeywell.



From a rail operations perspective, Honeywell crews and locomotives pickup and deliver the cars, spotting the empty cars at the Williams loading racks then picking up the loaded cars and assembling them for shipment to destination.



Williams is located in Zone 3 and Zone 4 as shown on the preceding Geismar plant diagram. The interchange of Williams's cars between Honeywell and GTC occurs at the farthest removed area of Zone 1, as shown on the following diagram. No direct service is provided to Williams by GTC at the Geismar plant complex.



The following photographs illustrate the Honeywell rail operation. We noted the total absence of GTC crews or locomotives as well as the intense and consistently high level of rail operations and performance by Honeywell.



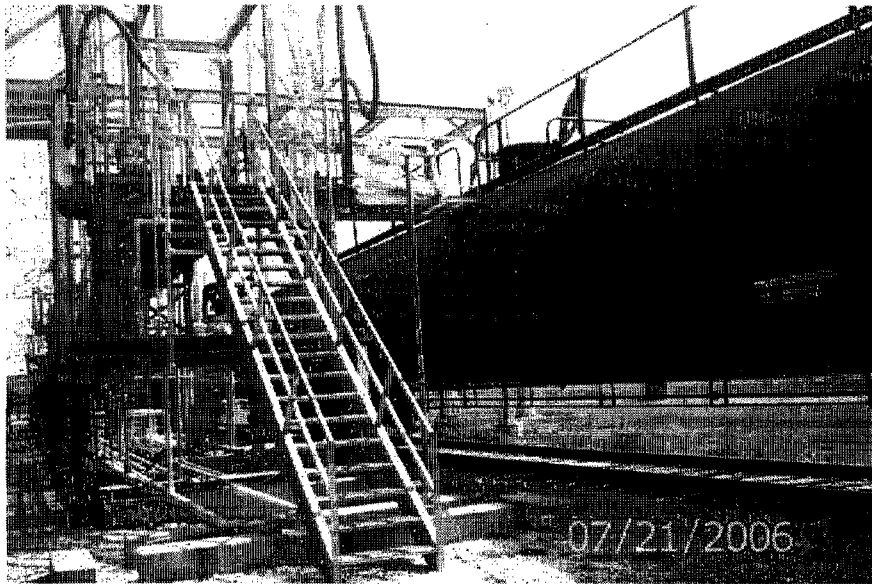
Honeywell locomotive and crew on site at the Williams facility



Block of cars assembled by Honeywell locomotive and crews
for "hand off" to GTC

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Williams loading rack at Geismar switched by Honeywell locomotive and crews



Honeywell locomotive Serving Williams Olefins

As noted above, Snavelly King reflected these direct on site observations of the rail operating situation in our cost analysis.

VI. Snavely King Challenge of GTC RSAM Calculations and Anomalous GTC RSAM Benchmarks

A. Snavely King Request for Correction of Errors

On January 12, 2006, Snavely King filed a Request for Correction of Errors, pursuant to ¶ 7a of the Information Quality Guidelines adopted by the Surface Transportation Board ("STB") on October 1, 2002 in Ex Parte No. 587. The Request related to the Revenue Shortfall Allocation Method ("RSAM") factors that the STB has calculated for the Grand Trunk Corporation ("GTC") for the years 2002 and 2003. Snavely King noted that these RSAM factors were extraordinarily and unreasonably high relative to (1) the three constituent railroads that have been combined to make up the GTC and (2) all other Class I railroads. These factors are calculated annually by the STB from cost and performance data submitted by each railroad in STB Report Form R-1. The RSAM factors are calculated by the STB with and without an "efficiency adjustment" and are disseminated each year in public notices titled "Rate Guidelines – Non-Coal Proceedings" under the caption of Ex Parte 347 (Sub 2).

In 2002, the Canadian National Railway consolidated the cost reporting for its three U.S. railroads, the Illinois Central ("IC"), the Grand Trunk Western ("GTW") and the Wisconsin Central ("WC"). The consolidated railroad, the GTC, was thus a composite of three railroads, two of which had previously submitted separate R-1 forms.

In the last year prior to the consolidation, 2001, the IC's RSAM was 182 percent (with efficiency adjustment) and the GTW's RSAM was 146 percent. In stark contrast, during the first year of consolidated reporting, 2002, the GTC's efficiency-adjusted RSAM was 415; and in 2003 it was 390 percent.

This dramatic increase could not be explained by the addition of the WC to the consolidated cost report. First, the WC is a Class II railroad and therefore relatively small in comparison to the other two Class I railroads. Moreover, there is no indication that the WC was a high-cost operation. To the contrary, the WC's operating ratio during the 1996-2000 period prior to consolidation averaged about 76 percent, well below all Class I railroads, except GTC. GTC achieved an even lower cost average operating ratio of 75 percent during the 1996-2000 period, followed by an unprecedented low cost average operating ratio of 68 percent during the 2001 - 2005 year to date period.

Not only were the consolidated GTC RSAM percentages unreasonably high relative to those previously reported for the constituent railroads, but they were totally out of scale with the rest of the railroad industry. In 2002, the average efficiency-adjusted RSAM of all Class I railroads, including GTC, was 221 percent, and in 2003 it was 222 percent. In each year, GTC's RSAM was more than 125 percentage points higher than the next highest railroad.

On the basis of the foregoing, Snavely King submitted that the GTC composite RSAMs were incorrect. We see the GTC result as anomalous and certainly inappropriate for use in evaluating rate reasonableness.

As a long standing practice Snavely King has replaced anomalous URCS unit costs with URCS regional unit costs. The primary incidence of this has been anomalous GTC unit costs.

In December 2005 and January 2006 Snavely King pursued clarification of the issues through informal discussions with CN representatives. On January 12, 2006, Snavely King submitted to the Surface Transportation Board (STB) a formal request for correction and restatement of the RSAM factors of the Grand Trunk Corporation ("GTC"). This was filed under STB Ex Parte No. 587; Correction of Errors in Information Disseminated by the Board.¹⁴ Our request was prompted by anomalies discovered in preparing a rate reasonableness case for filing in Ex Parte 347 (Sub No. 2). The request was not publicly docketed by the STB.

The STB Information Quality Guidelines set forth three main aspects of information quality:¹⁵

- Utility and usefulness
- Objectivity- accuracy, completeness, reliability, clarity and lack of bias
- Integrity

SK believes the evidence indicates that the GTC's RSAM data fails on all of these counts.

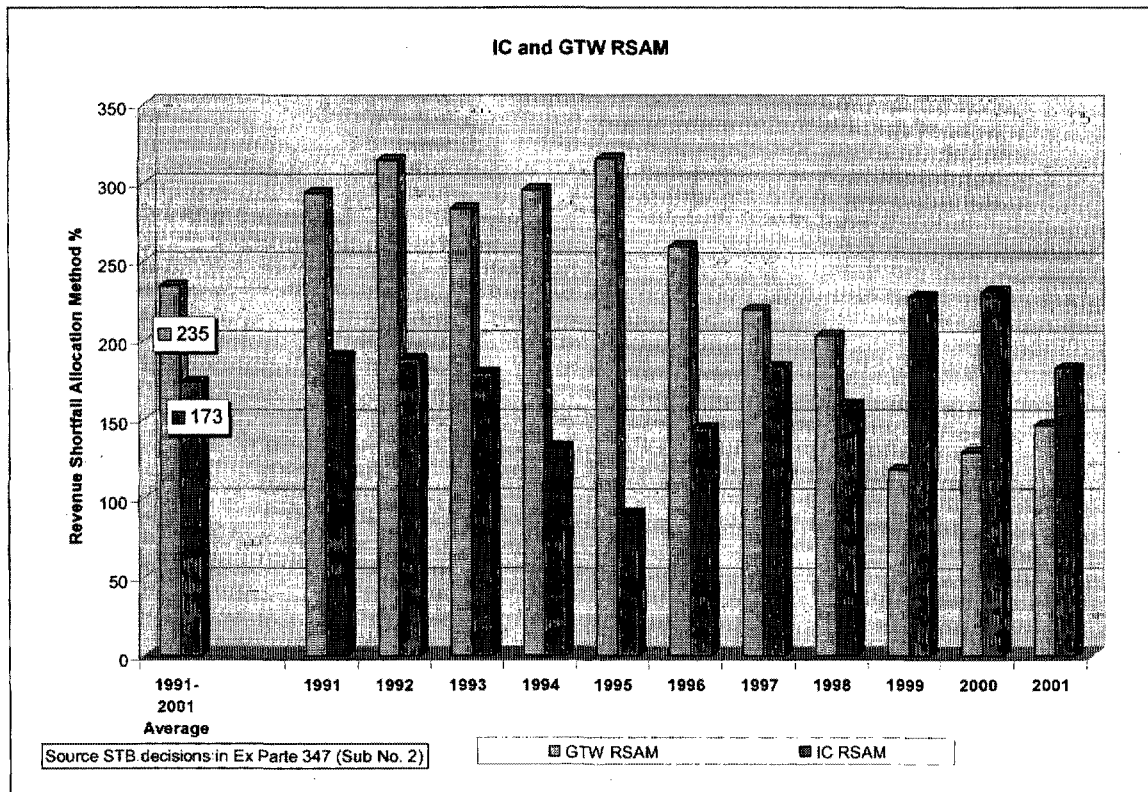
The STB and GTC data shows clearly the disabling effect of the over stated GTC RSAM factors which result primarily from a CN markup of IC investment. That markup caused such high RSAM factors as to put GTC out of reach of US rail regulation. The GTC RSAM markup disadvantages shippers as well as all other railroads which have reported reasonable and reliable data for use in the STB rate reasonableness review.

¹⁴ See Information Quality Guidelines STB Decision, Ex Parte 587, Service Date October 1, 2002

¹⁵ STB Decision, Ex Parte 587, October 1, 2002

In response to this serious and persistent error, SK has on several occasions substituted URCS Region 4 unit costs for the distorted GTC URCS unit costs purportedly representing Canadian National's subsidiary U.S. railroad, the GTC.

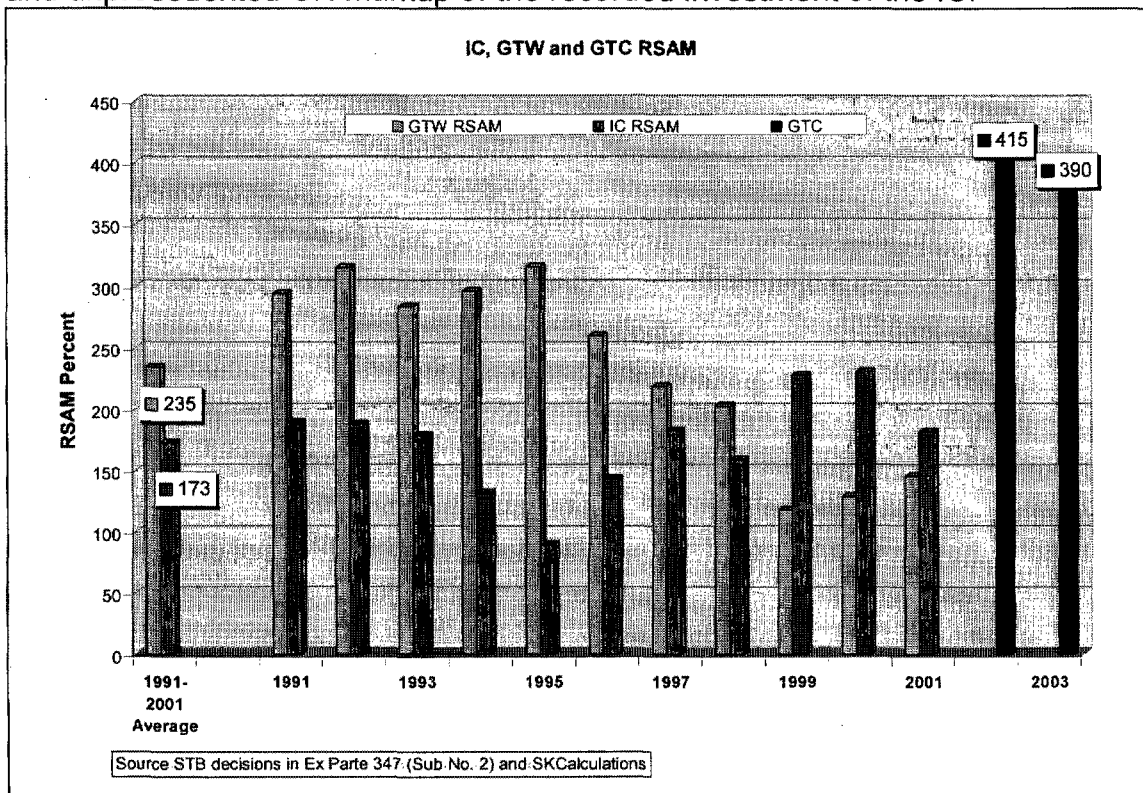
GTC is a combination of the three U.S. railroads owned by the Canadian National Railway; the Illinois Central (IC), the Grand Trunk Western (GTW) and the Wisconsin Central (WC). In 2002, the CN consolidated its cost and performance reporting for these railroads into a single report, the GTC. The following charts show the RSAMs of IC and GTW. We find a sharp and unexplained discontinuity between GTC and the predecessor IC and GTW.



As the preceding chart indicates, the IC has produced low levels of RSAM since the inception of the measure. The GTW RSAM, while higher in some years, has also been at moderate levels. Over the 1991 – 2001 period the average IC RSAM was 173 percent and the average GTW RSAM was 235 percent.

The combined values of the IC and GTW RSAM averaged 204 percent. The GTC RSAM, as shown in the following chart, is much higher than either the IC or GTW RSAMs. This is an incongruous result given the fact that the GTC is presented as a combination of the IC, the GTW and the Wisconsin Central (WC). The WC is a low cost railroad with less revenue than either the IC or the GTW. The WC can not be the cause of the dramatic upward surge in GTC RSAM. That

GTC RSAM discontinuity is unsupported and resulted primarily from a significant and unprecedented CN markup of the recorded investment of the IC.



The disconnect between the predecessor IC and GTW RSAM's and the successor GTC RSAM's is abundantly clear from the preceding chart.

Inclusion in GTC of the Wisconsin Central (WC) does not explain the difference nor the disconnect. WC is a low cost carrier. By definition, as a Class II carrier, WC has revenue levels well below the Class I levels of IC and GTW. As shown in the following table, WC is also a very low cost carrier by Class I standards, posting operating ratios as low as 73 percent in recent years.

Line	Wisconsin Central Operating Ratio				
	1996	1997	1998	1999	2000
1 Revenues (\$ Thousands)	\$ 278,397	\$ 333,510	\$ 344,062	\$ 362,744	\$ 372,114
2 Rail Operating Ratio	81%	77%	73%	75%	75%

Source: Wisconsin Central 2000 10-k

The core issue in these incongruous results is the accounting of the CN-GTC¹⁶ costs. These costs flow into the calculation of the Uniform Rail Costing System (URCS) unit costs, and the URCS costs are used to calculate the STB's Ex Parte

¹⁶ CN-GTC is the subsidiary of the Canadian National (CN). The CN-GTC is made up of the Illinois Central, Grand Trunk Western, and the Wisconsin Central.

347 sub-2 benchmark parameters.¹⁷ Higher URCS unit costs lead to lower Revenue to Variable Cost (R/VC) ratio for given lanes. Lower R/VC's move more traffic below the 180% R/VC (or Revenue Cost Ratio- RCR) threshold. This in turn leads to a higher RSAM benchmark. Higher RSAM benchmarks make a small shipment rate case less feasible. Based on SK initial review, the 2004 CN/GTC URCS unit costs, while lower than previous years, are still well above other Class I Railroads unit costs¹⁸. This result runs counter to all the available evidence which shows CN as the lowest cost railroad in North America.

The following table shows CN operating ratios, consistently the lowest in the North American Rail industry.

Line	CN Financial Data					
	1995	1996	1997	1998	1999	2000
1 Revenues (cn\$ millions)	\$ 3,862	\$ 3,911	\$ 4,283	\$ 5,137	\$ 5,236	\$ 5,428
2 Operating Expenses	\$ 3,437	\$ 3,323	\$ 3,356	\$ 3,856	\$ 3,769	\$ 3,780
3 Rail Operating Ratio (Ln. 2 / Ln. 3)	89%	85%	78%	75%	72%	70%
	2001	2002	2003	2004	2005	
1 Revenues (cn\$ millions)	\$ 5,652	\$ 6,110	\$ 5,884	\$ 6,548	\$ 5,354	
2 Operating Expenses	\$ 3,872	\$ 4,240	\$ 4,107	\$ 4,380	\$ 3,448	
3 Rail Operating Ratio (Ln. 2 / Ln. 3)	69%	69%	70%	67%	64%	
Notes:						
1 - 1995 to 1997 figures exclude the IC						
2 - 1998 figures have been presented on a pro - forma basis. Pro forma refers to the consolidation of the financial data of Illinois Central Corporation (IC) assuming the acquisition and control of IC occurred on January 1, 1998						
3 - The 2001 figures include Wisconsin Central Transportation Corporations from October 9, 2001						
4 - 2004 includes Great Lakes Transportation LLC's railroads and related holdings (GLT) and BC Rail from May 10 and July 14, respectively						
5 - 2005 reflects the first 9 months of the year						
Source: CN Investor Fact Books and Annual Reports 2000 to 2005						

The operating ratio data stands in clear contrast to the dramatic surge in GTC RSAM. Since the consolidation of CN's US railroad operations we have found recurring issues with the CN allocation of costs in its US regulatory STB filings. The STB R-1 filings are used in the calculation of URCS and the RSAM benchmark. The anomalies and the resulting higher unit costs have put CN's US subsidiaries out of reach of the Surface Transportation Board's rate reasonableness regulatory procedures. Moreover, use of data from the R-1 filings in commercial negotiations with GTC can put all GTC shippers, at a significant disadvantage. Simply put, the anomalous, and we believe, incorrect GTC data prevents accurate analysis of rates either in negotiations or in litigation.

¹⁷ URCS is the Uniform Regulatory Costing System adopted as the standard rail costing system by the ICC and the STB and all Class I railroads.

¹⁸ Further analysis of CN-GTC 2004 Unit costs is needed

B. The STB Staff's Reply

On April 6, 2006 the STB Staff responded to Snavely King's Request. The response asserted that the GTC's RSAM factors were not in error and that the increase in the GTC's RSAM resulted principally from the revaluation of the capital investment of the Illinois Central ("IC").

The purchase of the IC by the Canadian National Railway ("CN") involved a markup to a price substantially above the IC's original book value.

According to Staff, prior Board decisions have authorized the inclusion of acquisition markups in the calculation of revenue adequacy on the grounds that a very large proportion of rail traffic is not subject to any STB maximum rate regulation. The Staff's response identified the effect of including the acquisition premium that the CN paid for the IC.

In 2001, the net investment value of the IC and the GTW together was \$1,441,638,000. In the next year, 2002, the net investment value of the newly consolidated GTC was \$4,364,525,000, an investment over three times as large as the IC and GTW had recorded on their books of account.

While a small portion of this increase may have been related to the addition of the Wisconsin Central Railroad, by far the largest component was the acquisition premium that resulted from the purchase of the IC by the CN at a price several times the recorded book value of the IC's assets.

Staff's letter indicated that capital expense per ton-mile increased 56 percent between 2001 and 2002, while other operating expenses per ton-mile increased by 6 percent. Subsequent SK analysis of Staff's underlying workpapers revealed that the actual increase in capital-related costs was not 56 percent, but 86 percent. The workpapers also showed that non-capital related variable costs increased not by 6 percent, but by 25 percent.

C. Snavely King's Petition for Reconsideration

On May 5, 2006, Snavely King submitted a Petition for Reconsideration of Staff's initial finding that its GTC RSAMs were not in error. The Petition acknowledged that the RSAMs were calculated in conformance with the Uniform System of Accounts ("USOA"), and that the Interstate Commerce Commission had accepted the revaluation of acquired investments for purposes of determining revenue adequacy. SK argued that whatever the propriety of acquisition revaluation for revenue adequacy calculations, it is altogether inappropriate to markup a railroad's investment levels in a small shipments rate

reasonableness test.

D. Staff's Response to Snavely King Request for Reconsideration

On June 28, 2006, STB Staff responded to Snavely King's May 5 Request for Reconsideration. Staff denied the request and commented that Snavely King's complaint was a "substantive challenge to agency regulations" and was beyond the scope of the Information Quality Guidelines.

Snavely King's conclusion was that the GTC RSAM calculation would have to be challenged in a context of a rate reasonableness case. In this rate reasonableness case we have done so.

VII. Propriety of Acquisition Revaluations in Rate Reasonableness Cases.

A. Relevant Law

The issue of whether original cost or some markup over that value is appropriate in testing the reasonableness of rates was addressed in the Supreme Court's 1944 decision in *Hope Natural Gas Co.*¹⁹ In reversing the Circuit Court of Appeals, the Supreme Court found that the Federal Power Commission was correct in using original cost, rather than a higher measure of "fair value" in setting rates. As the Court explained,

"...fair value" is the end product of the process of rate-making not the starting point as the Circuit Court of Appeals held. The heart of the matter is that rates cannot be made to depend upon "fair value" when the value of the going enterprise depends on earnings under whatever rates may be anticipated.²⁰

In other words, if the valuation of the enterprise is determined by the results of regulation, it is circular to base rates on that valuation. The investor is entitled to a fair return only on the investment initially put into the enterprise. This principle permeates the regulation of the utility industries, where acquisition markups are separately identified in the respective USOAs and are allowed in the utility rate base only if the utility can demonstrate that the acquisition benefited its customers.²¹

¹⁹ *Federal Power Commission v. Hope Natural Gas Co.* 320 U.S. 593 (1944) ("*Hope*").

²⁰ *Id.* at 601.

²¹ Over the course of its 36-year history, in addition to its appearances in transportation proceedings, Snavely King has participated in over 1000

B. ICC/STB Interpretation of the *Hope* principle.

When the ICC first addressed the issue of "revenue adequacy," as required by the Staggers Act, it adhered to the *Hope* principles by rejecting any "fair value" representations of railroad investment as the base upon which returns would be calculated. In its decision of March 26, 1981, the ICC emphatically adopted original cost as the basis for revenue adequacy determination:

In making our revenue adequacy findings in this proceeding, we have assessed the value of the rate base as the sum of the original cost of the track assets plus betterments to track, plus the depreciated book value of all other assets.²²

This issue was again addressed when the ICC reconsidered its revenue adequacy standards in 1986. In an order dated December 16, 1986, the ICC rejected the railroads' proposal to adopt Trended Net Original Cost in favor of "a net investment base derived from the straight line historical cost accounting method."²³

However, in 1990, the ICC reversed its longstanding adherence to original cost and determined that the markup (or markdown) resulting from an acquisition could be reflected in the determination of revenue adequacy:

We conclude that we cannot ignore acquisition cost and adhere to frequently outdated predecessor values. Accepting predecessor values in the face of more current probative evidence of value arrived at in arms length negotiations would not only sacrifice accuracy, but could cause the very capital flight which AAR fears.²⁴

As for *Hope's* circularity issue, the ICC had this to say:

We are unpersuaded that the price paid for railroads is determined primarily by regulatory constraints and that use of acquisition costs will produce a downward spiral of acquisition costs for railroads. While such an argument has force with respect to a heavily regulated utility, most rail rates are not

telephone, electric, gas and water utility proceedings before federal and state regulatory agencies.

²² *Standards for Railroad Revenue Adequacy*, Ex Parte No. 393, 264 I.C.C.803, 821(1981) (emphasis supplied).

²³ *Standards for Railroad Revenue Adequacy*, Ex Parte No. 393 (Sub No. 1), 3 I.C.C. 2d 261, at 283 (1986).

²⁴ *Railroad Revenue Adequacy – 1988 Determination*, 6 I.C.C.2d 919, at 940 (1990).

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subject to maximum rate regulation.²⁵

In its 1990 *Revenue Adequacy* decision, the ICC considered acquisition costs below book value. In 1998, the Board was faced with the reverse condition regarding the acquisition of Conrail by the CSX and the Norfolk Southern. Again, it found that the circularity problem does not exist:

Because relatively few shippers were captive to rail even before this transaction, CSX and NS could not successfully pursue a strategy of making up a revenue shortfall simply by increasing their rates to captive shippers.

Presumably, these prior STB decisions underlie the current provision of the USOA that acquisition costs can be included in the rail property accounts.

C. Acquisition Value in Small Shipment Rate Reasonableness Cases.

The Board's rationale relies on its belief that only a relatively limited amount of traffic is subject to maximum rate regulation.²⁶ The Board believes that this condition renders irrelevant the *Hope* circularity issue. Whatever the propriety of this belief, the Board has failed to address the impact of its valuation policy on the traffic that is subject to maximum rate regulation.

Implicit in the Board's reasoning is the proposition that the value of the railroad would be significantly different if maximum rate regulation were pervasive. Under pervasive regulation, the IC would be subject to overall revenue levels determined by an allowed rate of return on the original cost of the railroad's assets, as required by *Hope*. It is unlikely that the IC would have had the high value that the CN ascribed to it. The very large difference between the original cost of the IC's investment and its acquisition value results primarily from the fact that the STB declines to regulate most of its traffic.

If *de facto* unregulated pricing accounts for the high value of the IC's plant, then it is not appropriate to apply that inflated value in determining the maximum rates of the limited amount of traffic that the STB does regulate. Captive shippers of regulated traffic should not be saddled with the marked-up valuations caused by unregulated traffic.

²⁵ Id. 941.

²⁶ The STB assumption as to the amount of traffic eligible for rate regulation can be challenged. Traffic that is captive to rail transportation should be subject to rate regulation. Moreover, the sequence of rail mergers has significantly increased the pricing power of the individual remaining railroads. Snavely King's years of experience in analyzing rail shipments supports the need for greater access to rate reasonableness regulation.

Consider the chemical industry. Approximately two-thirds of that industry's rail shipments are subject to maximum rate regulation. Unlike the majority of rail shippers who enjoy competitive alternatives, chemical shippers' recourse against unreasonable rail rates lies with the regulatory powers of the STB. And, unlike coal shippers, chemical shippers cannot afford the complex stand-alone cost rate cases. They are therefore heavily reliant on the Board's small shipment rate guidelines. This makes them peculiarly susceptible to impact of the three small shipment guideline ratios, one of which is the RSAM.

The sudden inflation of the GTC's capital costs relative to those of the pre-existing constituent railroads produces unreasonable results that are questionable under the "arms-length" principle and counter to the basic reality of the railroads' operations. More importantly, allowing this sudden inflation in value to flow into the RSAM is a practice that is grossly unreasonable to shippers seeking regulatory rate relief.

First, the acquisition of the IC by a single unopposed bidder, CN, may not meet the "arm's length" test. This possibility is reinforced by the evidence that the acquisition of Conrail by two competing bidders, Norfolk Southern and CSX, produced very minor changes in the RSAM factors before and after the acquisition.

The unreal aspect of the 2002 RSAM ratios is demonstrated by comparing GTC RSAM changes to the changes in the Revenue-to-Variable-Cost factors. The RSAM for the IC and the GTW more than doubled from a simple average of 204 percent during the period 1991-2001 to 415 percent in 2002 and 390 percent in 2003. Yet, the GTC R/VC >180 benchmark did not significantly change between 2002 and 2004.²⁷ The dynamics of the RSAM mean that with this relatively stable R/VC >180, the GTC must have experienced a large and persistent surge in non-compensatory traffic to produce such high RSAMs beginning in 2002.

Thus, the revaluation of the IC's investment has implications beyond just high-priced traffic. Specifically, the Long-Cannon factors would require a broad-based effort to maximize contribution from the traffic with R/VC below 180 before turning to higher rates on traffic above 180 R/VC. There is meager evidence that the GTC has engaged in this effort.

Of course, the basic track configuration, rail operations and maintenance practices of these railroads did not change materially between 2001 and 2002. Operational continuity notwithstanding, the newly consolidated railroad in 2002 is presented as a much more costly, less profitable enterprise than the constituent

²⁷ The GTC R/VC>180 benchmark was 228 percent in 2002, 252 percent in 2003, and 233 percent in 2004.

railroads in 2001. Not only does the markup needed to cover URCS fixed costs increase, but the non-compensatory traffic excluded from the efficiency-adjusted RSAM (the <100 Revenue Variable Cost (R/VC) traffic group) increases, which widens the spread between efficiency-adjusted and unadjusted RSAMs.

Most important is the impact of the acquisition markup on those shippers and industries that are captive to the GTC and need protection from excessive rail rates. For them, the unilateral tripling of the IC's investment value in RSAM calculations effectively determines that GTC rates will not be subject to rate reasonableness review or regulation.

This is an unreasonable practice, specifically with respect to the chemical industry. No other railroads or regions have RSAM results anywhere close to the GTC. The GTC RSAM data simply fail to pass the test of reasonableness. The unreasonableness and unfairness of this practice to shippers experiencing high rates is obvious. The actual costs of such traffic did not change significantly between 2001 and 2002, but the opportunity to apply the rate reasonableness guidelines to receive rate relief was seriously eroded, if not foreclosed altogether.

The shippers' diminished access to rate reasonableness review is not driven by the economics, operational efficiency, or profitability of the railroads. Rather, it is the result of an acquisition of one railroad by another at a price well in excess of the book value of the assets. No one, other than the two railroads, had any meaningful input into the derivation of that price. No one explicitly determined or accepted the propriety of passing the inflated costs on to shippers. Yet, by accepting the acquisition markup as a restatement of the IC's capital costs, the Board would implicitly make that unreasonable determination and acceptance.

For the foregoing reasons, Snavely King respectfully requested that the Board either (1) remove the IC acquisition markup from the calculation of the GTC's RSAM, or (2) convene an evidentiary proceeding in which it will determine whether and, if so, how much of that markup should be included in the GTC's RSAM benchmark.

VIII. Regulatory Policy Implications

The regulatory policy implications of these findings are significant. Snavely King saw the absence of accurate GTC RSAM parameters as a clear break with the STB IQ Guidelines. Moreover, this defective data renders the GTC immune from small shipment rate reasonableness review. This immunity from regulation places GTC shippers at a distinct disadvantage compared to shippers served by other carriers. Both railroads and shippers are harmed by the incorrect data. The GTC immunity from regulation places other railroads at a distinct disadvantage

since, unlike GTC, those other railroads are subject to STB small shipment rate reasonableness review.

Snavely King requested expedited review by the Surface Transportation Board of the data and evidence we presented. Our client and many other US rail shippers were seriously disadvantaged by rate increases imposed by the GTC, without recourse to STB small shipment rate reasonableness review.

IX. Workpapers summarizing URCS cost results

- The accompanying Excel Workbook summarizes the confidential results of SK analyses of data and SK observations collected in the field, which have also been presented in this verified statement and the accompanying request for mediation and rate complaint.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Workpapers Supporting
Formal Rate Complaint

And

Request for Mediation by
Williams Olefins, L.L.C.

Regarding Canadian National

Concerning the Rail Rate for Propylene
Between Geismar, LA and Longview, TX

And

Between Geismar, LA and Garyville, LA

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November 20, 2006

REDACTED