

***SK Snavely King Majoros O'Connor & Lee, Inc.***  
Economic and Management Consultants

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October 24, 2006

By Hand Delivery

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

217921



RE: Ex Parte No. 646 (Sub-No. 1) – Simplified Standards for Rail Rate Cases  
Comments of Snavely King Majoros O'Connor & Lee, Inc.

Dear Secretary Williams,

Enclosed for filing please find the original and twenty copies of the Comments of Snavely King Majoros O'Connor & Lee, Inc submitted in response to the Board's Notice of Proposed Rulemaking dated July 28, 2006 in the above captioned proceeding.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kim Hillenbrand".

Kim Hillenbrand

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**Before the**  
**Surface Transportation Board**  
  
**Ex Parte No. 646 (Sub-No.1)**  
  
**Simplified Standards for Rail Rate Cases**  
  
**Comments and Recommendations**  
  
**Of**  
  
**Snavely King Majoros O'Connor & Lee, Inc**  
  
**October 24, 2006**

**Tom O'Connor  
Charles W. King  
Kim N. Hillenbrand  
Snavely King Majoros O'Connor & Lee, Inc.  
1111 14<sup>th</sup> Street NW, Suite 300  
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(202) 371-9149**

## ***I. Introduction***

Snavely King Majoros O'Connor & Lee, Inc. ("SK" or "Snavely King") welcomes this opportunity to analyze and comment on the Simplified Standards for Rail Rate Cases proposed by the Surface Transportation Board ("STB" or "Board") decision served on July 26th, 2006 in Ex Parte 646 (Sub No. 1) Simplified Standards for Rail Rate Cases.

The development of a method for determining the reasonableness of small shipment rates has been a directive from Congress since 1995.<sup>1</sup> As the Board noted in its July 26, 2006 decision, one shipper filed a case under Simplified Guidelines, but the parties settled the dispute, with the assistance of Board mediation, before presenting any evidence. BP Amoco Chem. Co. v. Norfolk S. Ry., STB Docket No. 42093 (STB served June 28, 2005)<sup>2</sup>.

The Board action in this proceeding is a commendable initiative and a step in the right direction toward meeting that longstanding 1995 Congressional directive. The Board is seeking to meet statutory goals of providing captive shippers meaningful access to regulatory remedies for rail rates that are unreasonable, while recognizing the need for railroads to earn a reasonable return on their investments.

The 2005 and 2006 publicly reported financial performance of the railroads suggests that they are doing rather well in generating a reasonable return. As Table I shows the Class I railroads had a solid financial year in 2005. As of today's filing, almost of the Class I railroads have reported strong 3<sup>rd</sup> quarter results.

Table I<sup>3</sup>  
(Dollars in Thousands)

| <u>Railroad</u> | <u>2005 Total Operating Revenue</u> | <u>2005 Adjusted Net Railway Operating Income</u> |
|-----------------|-------------------------------------|---------------------------------------------------|
| BNSF            | \$12,601,292                        | \$1,803,411                                       |
| CSXT            | \$7,688,738                         | \$844,748                                         |
| CN/ GTC         | \$2,024,734                         | \$448,102                                         |
| KCS             | \$799,604                           | \$66,019                                          |
| NS              | \$8,526,827                         | \$1,616,430                                       |
| CP / SOO        | \$687,170                           | \$101,109                                         |
| UP              | \$13,473,233                        | \$1,398,344                                       |
| Total           | \$45,801,598                        | \$6,278,163                                       |

<sup>1</sup> In 1995, Congress directed the Board to "establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case." 49 U.S.C. 10701(d)(3). In 1996, the Board adopted the guidelines set forth in Rate Guidelines – Non-Coal Proceedings, 1 S.T.B. 1004 (1996) (Simplified Guidelines).

<sup>2</sup> Snavely King participated as an expert witness on behalf of BP Amoco.

<sup>3</sup> 2005 STB R-1 Reports, Sch 210 Ln 13 and Sch 250 Ln 5.

In the context of continued strong financial performance for the railroads, as has been generally the case in 2006, we commend the Board's increased attention to the statutory goal of providing captive shippers meaningful access to regulatory remedies for rail rates that are unreasonable.

The statute is clear on the Board's responsibility:

If a railroad has market dominance, its transportation rates for common carrier service must be reasonable. 49 U.S.C. 10701(d)(1), 10702. Market dominance is defined as an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies. 49 U.S.C. 10707(a). The Board is precluded, however, from finding market dominance if the revenues produced by a challenged rate are less than 180% of the carrier's "variable costs" of providing the service. 49 U.S.C. 10707(d)(1)(A). Variable costs are the portion of railroad costs that have been determined to vary with the level of traffic, using the Board's Uniform Rail Costing System (URCS).<sup>4</sup>

The Board proposed a three part plan for meeting its statutory requirement:<sup>5</sup>

1. **Create a simplified stand-alone cost (Simplified-SAC) procedure to use in *medium-size rate disputes* for which a full stand-alone cost (Full-SAC) presentation is too costly, given the value of the case.**
2. **Retain the "Three-Benchmark" method of Simplified Guidelines, with certain modifications and refinements, for *small rate disputes* for which even a Simplified-SAC presentation would be too costly, given the value of the case.**
3. **Establish *eligibility presumptions* based on the maximum value of the case to distinguish between large, medium-size, and small rail rate disputes.**

It is useful to note that the rate reasonableness determinations respond to the requirements of the *Staggers Rail Act* of 1980 and are made within the context of the three Long Cannon factors included in that landmark legislation. The Board recognized the need to reflect the Long Cannon factors in its July 26, 2006 decision proposing the new simplified small and medium rate reasonableness standards. Under the *Interstate Commerce Act*, as revised by the ICCTA, the ICC and its successor agency the STB were charged with protecting individual captive shippers from unreasonable rate levels. In The *Staggers Rail Act* of 1980 the ICC and subsequently the STB were specifically directed to

<sup>4</sup> Ex Parte 646 (Sub-No. 1) Simplified Standards for Rail Rate Cases, STB Decision, July 26, 2006, page 4.

<sup>5</sup> Ex Parte 646 (Sub-No. 1) Simplified Standards for Rail Rate Cases, op. cit., page 3.

consider three so-called Long-Cannon factors, set forth in 49 U.S.C. 10701(d)(2). These factors are:

- ☐ **Long-Cannon- 1:** The amount of traffic transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic ;
- ☐ **Long-Cannon- 2:** The amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and
- ☐ **Long-Cannon- 3:** The carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

The STB is also directed to ensure that carriers have the opportunity to earn revenues adequate to cover costs, allow replacement of needed assets, and provide a fair return on investment.

## ***II. Summary of SK Comments on STB Proposals for Methodology for Small and Medium-Size Rail Rate Disputes***

### ☐ General Comments

- The Board should offer a 30-day mediation period at the initiation of every small shipment and medium shipment rate complaint.
- The rate reasonableness process must adequately address the Long-Cannon factors.
- The objective of the newly proposed standards is to provide “a simplified and expedited method for determining whether a railroad is exercising its market power to charge more than necessary to earn adequate revenues.”
- The proposed eligibility criteria unrealistically and unnecessarily restrict access to both medium and small sized rate cases. The maximum value of the case is set much too low for both medium and small rate cases.
- The Board’s estimates of the cost of bringing a SAC case are outdated and are based principally on railroad statements submitted ten years ago, in 1996.
- The procedural schedule is too extended and could be more compact.

The Board makes several sequential determinations, and for each it allows itself three to six months. Since justice delayed is justice denied, the interest of justice would be better served if the Board expedited its decision process to shorten the procedural schedule of both the medium sized and small shipment proceedings.

Moreover, the Board should not set its schedule in stone. It should allow for shortening that schedule when circumstances allow.

- The discovery process would be improved as proposed by the STB.

#### ❑ Medium Sized Simplified SAC

- Neither SAC nor medium-sized simplified SAC as proposed is feasible for a rail distribution pattern involving a single or few origins and numerous and widely distributed destinations.
- Much of the information required to mount a medium sized-simplified SAC case is not available to shipper complainants.
- Requiring the shipper to demonstrate that the route selected has sufficient existing capacity is burdensome, unrealistic and unreasonable.
- It is unreasonable and needlessly restrictive to preclude rerouting of non-issue traffic for the medium sized simplified SAC procedure.
- It is unnecessarily restrictive to require that the test year be the most recent four quarters preceding the filing of the complaint, without recognition of anomalous or atypical events.
- The internal cross-subsidy principle is ill-advised and impracticable even if the railroad bears the evidentiary burden.

#### ❑ Small Shipment Rate Cases

- The small rate case guidelines proposed by the Board are in many respects a significant improvement over the simplified guidelines adopted in 1996.
  - RSAM computation is an improvement over the previous RSAM ranges.
  - The R/VC total is an improvement over the R/VC>180 that previously was used.
  - It is proper to use unadjusted URCS results with flexibility to replicate the actual operations. As noted below, the need for this is particularly evident to reflect the actual rail operations often encountered with the shipper handling the switching at origin, or destination or both.
- There should be flexibility in the use of URCS to recognize the actual operating situation for a challenged movement.

- URCS assumes that the railroad performs both origin and destination switching, but this switching is often done by the shipper.
- The Waybill sample should be costed and available both with and without the make-whole cost adjustment.

While the make whole adjustment is used in a regulatory context, it is seldom used in a negotiations context. The small shipment procedures lead to both mediation and litigation, and the data should support both.

- The STB should be a proactive participant in the selection of the comparison groups.

Through the selection process the Board will have gained deep knowledge about both parties' comparison groups and will be able to apply its own analysis. There will be instances when the Board will have the opportunity to construct the best comparison group from the two parties final comparison groups. Selecting the best comparison group would be in the public interest rather than selecting the comparison group of one of the two parties. The STB has commented that the process would enable each party to submit a reasonable comparison group. There is a chance that both parties would submit reasonable comparison groups, but there would also be instances where one or both parties could submit unreasonable comparison groups, forcing the Board to choose an inappropriate comparison group. Having both parties submit reasonable comparison groups is ideal, but the reality is that neither party may find the other's comparison group reasonable. Working with both comparison groups, the Board should be able to define the best comparison group. Limiting the choice to an "either/or" selection of comparison groups submitted by the two parties needlessly restricts a crucial part of the process.

- The comparison group should be made up of all similar traffic, not just the traffic with R/VC over 180%.

Long-Cannon- 3 states that the carrier's mix of rail traffic should be analyzed to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues. By limiting the comparison group to traffic with an R/VC ratio over 180 percent, the Board effectively predetermines that the issue traffic will pay a higher share – and maybe an unreasonable share – of the carrier's overall revenues. The test of a reasonable rate should not be just that the rate matches the contribution of other captive traffic, but that the rate match the contribution of similar traffic.

- Shipper representatives should be allowed access to the confidential waybill sample as part of the process of preparing complaints on behalf of shippers,

subject to confidentiality/non-disclosure agreements. Otherwise, key information is unavailable to shipper representatives.

The proposed rate reasonableness process relies on the costed waybill sample. Since the costed waybill sample contains confidential information, there is no way for practitioners and consultants to independently verify results without participating in a formal proceeding.

The Board presents shippers with an impossible task. In order to establish eligibility, shippers must demonstrate that they have a reasonably persuasive case. In particular, they must show that the R/VC ratios for the issue traffic are unreasonably high relative a comparison group of similar traffic. As proposed the data necessary to construct and cost an appropriate comparison group can't be obtained until the shipper's complaint has been accepted by the Board as offering a *prima facie* case.

- The apparent either/or choice between the current rate and a rate with R/VC at 180 percent is unrealistic, unreasonable, and a needless constraint on the mediation and litigation process.

We recommend recognizing as eligible the entire range of rates between the existing rate and a rate generating R/VC at 180. It appears from the Board's comments that it may be considering an either/or choice between retaining the present rate, no matter how high, and prescribing a rate at an R/VC ratio of 180 percent. If so, then this is an unreasonable set of alternatives. Clearly, reasonable rates can be set above 180 percent R/VC but well below the present rate if that rate is excessive. In fact, a rate in this middle ground often results from negotiations and mediation. SK urges the Board to make clear that it may prescribe rates above R/VC at 180 percent but lower than the present rate.

- Shipper and railroad representatives should have access to the waybill sample and the STB workpapers that are used to calculate the upper boundary for the challenged rate.

It appears from the Board's comments that it may be considering a "black box" calculation of the confidence intervals used to determine the upper boundary of rates resulting from analyses of the comparison group. If so, this secrecy is not only unnecessary but obstructionist to both parties in the proceeding. SK urges the Board to make clear that the computation of the confidence intervals will be transparent and available for review and analysis by all affected parties.

- The Board may also want to consider calculating confidence intervals not only of 90 and 95 percent, but also of 99 percent.

- There should be flexibility in the use of URCS to recognize the actual operating situation for a challenged movement.
  - For example, URCS assumes that the railroad performs both origin and destination switching, but this switching is often done by the shipper. URCS can be modified to reflect this characteristic of the issue traffic. Such modifications should be allowed by the Board's procedures.

□ Eligibility Requirements

- The \$200,000 five-year maximum for small shipment treatment would significantly reduce or perhaps even eliminate access to small shipment rate cases.

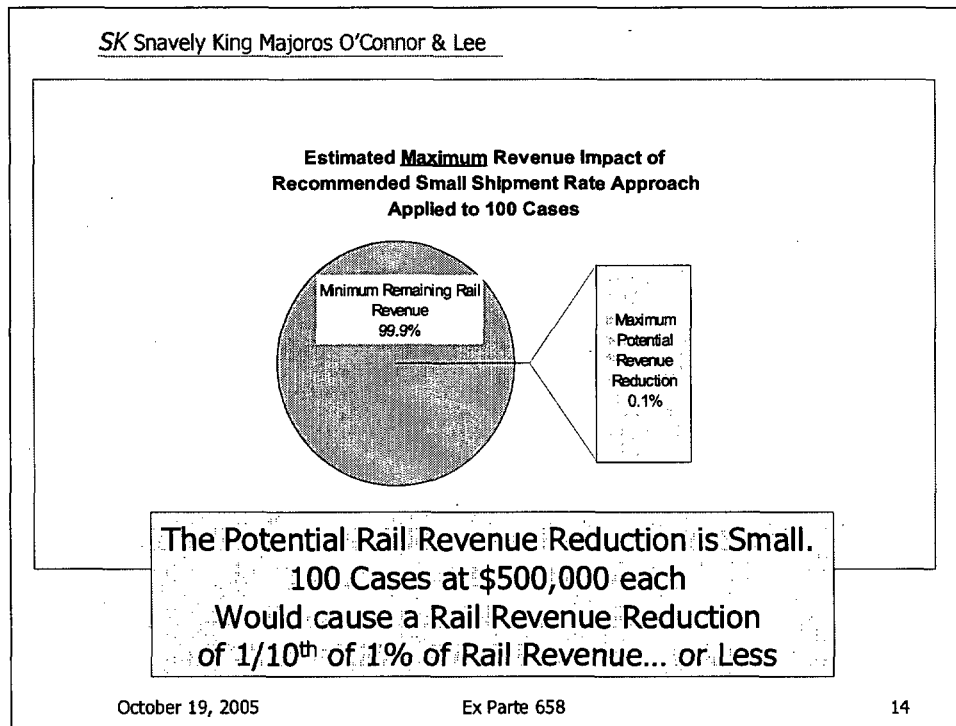
Since there have been no fully litigated small shipment rate cases, there is no record of the cost of preparing, presenting and litigating such cases. It is unlikely, however, that such cases could be pursued fully for less than \$50,000 in consulting and legal fees. This minimal value consumes one quarter of the maximum value of five years relief under the Board's proposed threshold. Since a complainant has no guarantee of receiving this relief – or any relief whatever – it would be thoroughly uneconomic for any shipper to risk bringing a complaint to the Board.

- \$500,000 per year is a more realistic eligibility threshold for small shipment rate cases. This value would equate to about \$2.5 million using the Board's standard five-year time period for the maximum value of the case.

In prior testimony before the STB, we have suggested \$500,000 per year as a reasonable access eligibility threshold.<sup>6</sup> Such a threshold would prevent any possible risk of hindering revenue adequacy, as demonstrated in the following charts excerpted from our prior testimony:

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<sup>6</sup> 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 the STB Ex Parte 657 April 2005 hearings.



The data presented in the preceding graph is reported in the following table also excepted from prior SK testimony on this issue:

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%                 |

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- The \$3,500,000 maximum case value for medium shipment treatment would significantly reduce medium shipment rate cases.
  - \$5,000,000 per year is a more realistic maximum.
- Shippers require protection from retaliatory rate increases following small shipment challenges.

One of the possible reasons why there has been only one small shipment rate case since 1996 is the fear by shippers that if they submit a complaint against a railroad, the railroad can retaliate by raising the shipper's rates on non-issue traffic or by reducing service to the shipper.

That fear will not go away with the issuance of new small shipment guidelines. Many shippers have multiple movements of rail traffic. Assuming a shipper were successful in pursuing a complaint against a railroad and received, say, \$100,000 in rate reductions, the railroad could attempt to increase rates on all of the shipper's other movements by the same \$100,000 or more.

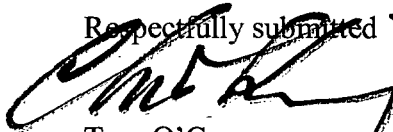
The Board should establish procedures whereby shippers subject to such retaliatory action by the railroads can appeal for redress.

### **III. Conclusion**

The Board action in this proceeding is a commendable initiative and a step in the right direction toward meeting that longstanding 1995 Congressional directive. The Board is seeking to meet statutory goals of providing captive shippers meaningful access to regulatory remedies for rail rates that are unreasonable, while recognizing the need for railroads to earn a reasonable return on their investments.

The recommendations offered above will help ensure that the Board meets these objectives.

Respectfully submitted



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(202)371-9149

CERTIFICATE OF SERVICE

I, Kim N. Hillenbrand, hereby certify that on this 24<sup>th</sup> day of October, I caused a copy of Snavely King Majoros O'Connor & Lee, Inc. Comments to be served by first-class mail or more expeditious method of delivery upon all persons who have filed a notice of intent to participate in STB Ex Prate No. 646 (Sub-No.1).



\_\_\_\_\_  
Kim N. Hillenbrand

Appendix A

**Resumes  
And  
Qualifications  
of  
Snavely King Majoros O'Connor & Lee, Inc.  
1111 14th St NW  
Suite 300  
Washington DC 20005**

## **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 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 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 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

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.

## **Charles W. King**

### **Snavely King Majoros O'Connor & Lee Inc**

**Washington, DC**

**President (1989 to Present)**

***Vice President (1970 - 1989)***

Mr. King, a founder of the firm and acknowledged authority on regulatory economics, brings over thirty years of experience in economic consulting to his direction of the firm's work in transportation, utility and telecommunications economics.

Mr. King has appeared as an expert witness on over 300 separate occasions before more than thirty state and nine U.S. and Canadian federal regulatory agencies, presenting testimony on rate base calculations, rate of return, rate design, costing methodology, depreciation market forecasting, and ratemaking principles. Mr. King has also testified before House and Senate Committees on energy and telecommunications legislation pending before the U.S. Congress.

In telecommunications, Mr. King has testified before the Federal Communications Commission on a number of policy issues, service authorization, competitive impacts, video dialtone, and prescription of interstate depreciation rates. Before state regulatory bodies, he has presented testimony in proceedings on intrastate rates, costs earnings and depreciation.

Mr. King has testified in electric, gas and water utility cases on virtually every aspect of regulation, including cost of capital, revenue requirements, depreciation, cost allocation and rate design. Mr. King is one of the nation's leading authorities on utility depreciation practices, having testified on this subject in several dozen cases before state regulatory bodies.

In addition to his appearances as a witness in judicial and administrative proceedings, Mr. King has negotiated settlements among private parties and between private parties and regulatory offices. Mr. King also has directed depreciation studies, investment cost benefit analyses, demand forecasts, cost allocation studies and antitrust damage calculations. Mr. King directed analyses of the prices of services under Federal Government's FTS2000 long distance system.

In Canada, Mr. King designed and directed an extended inquiry into the principles and procedures for regulating the telecommunication carriers subject to the jurisdiction of the Canadian Transport Commission. He also was the principal investigator in the Canadian Transport Commission's comprehensive review of rail costing procedures.

**EBS Management Consultants, Inc.,**

**Washington, DC**

**Director, Economic Development Department (1968-1970)**

**Principal Consultant (1966-1968)**

Mr. King organized and directed a five-person staff of economists performing research, evaluation, and planning relating to economic development of depressed areas and communities within the U.S. Most of this work was on behalf of federal, state, and municipal agencies responsible for community or regional economic development. Mr. King conducted research on a broad range of economic topics, including transportation, regional economic development, communications, and physical distribution.

**W.B. Saunders & Company, Inc.,**

**Washington, DC**

**Staff Economist (1962-1966)**

For this economic consulting firm, which later merged with EBS Management Consultants, Inc., Mr. King engaged in numerous research efforts relating primarily to economic development and transportation.

U.S. Bureau of the Budget, Office of Statistical Standards  
Analytical Statistician (1961-1962)

Mr. King was responsible for the review of all federal statistical and data-gathering programs relating to transportation.

Education

*Washington & Lee University, B.A. in Economics*

*The George Washington University, M.A. in Government Economic Policy*

## **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 there 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.

**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