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February 26, 2024

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20024

ENTERED  
Office of Proceedings  
February 26, 2024  
Part of  
Public Record

Re: State of Oklahoma by and through the Oklahoma Department of Transportation  
and Blackwell Industrial Authority  
– Alternative Rail Service –  
Line of Blackwell Northern Gateway Railroad Company  
Surface Transportation Board Finance Docket 36762

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Petition for Emergency Service Order under 49 C.F.R. § 1146.1 for alternative rail service on the line of the Blackwell Northern Gateway Railroad Company.

The filing fee has been paid via pay.gov. If you have any questions related to this filing, please let me know.

Sincerely,

Justin J. Marks  
Counsel to the Oklahoma Department of  
Transportation

cc: the Parties as required by 49 C.F.R. § 1146.1(e).

Enclosure

FILED  
February 26, 2024  
SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED  
February 26, 2024  
SURFACE  
TRANSPORTATION BOARD

**Before the**  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36762

**STATE OF OKLAHOMA BY AND THROUGH THE**  
**OKLAHOMA DEPARTMENT OF TRANSPORTATION AND**  
**BLACKWELL INDUSTRIAL AUTHORITY**  
**– ALTERNATIVE RAIL SERVICE –**  
**LINE OF BLACKWELL NORTHERN GATEWAY RAILROAD COMPANY**

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**JOINT PETITION FOR EMERGENCY SERVICE ORDER**  
**PURSUANT TO 49 C.F.R. §1146.1**

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*Attorneys for Oklahoma Department of  
Transportation*

Dated: February 26, 2024

**Before the**  
**SURFACE TRANSPORTATION BOARD**

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**STATE OF OKLAHOMA BY AND THROUGH THE  
OKLAHOMA DEPARTMENT OF TRANSPORTATION AND  
BLACKWELL INDUSTRIAL AUTHORITY  
– ALTERNATIVE RAIL SERVICE –  
LINE OF BLACKWELL NORTHERN GATEWAY RAILROAD COMPANY**

**PETITION FOR EMERGENCY SERVICE ORDER  
PURSUANT TO 49 C.F.R. §1146.1**

The State of Oklahoma by and through the Oklahoma Department of Transportation (“ODOT”) and joined by the Blackwell Industrial Authority (“BIA”) on behalf of themselves as rail line owners and impacted shippers as represented in the enclosed verified statements, hereby petition the Board pursuant to 49 U.S.C. §11123 and 49 C.F.R. §1146.1 for an emergency service order allowing the Chicago, Rock Island & Pacific Railroad, LLC (the “Rock Island”) to provide local rail service on 35.3 miles of rail lines owned by ODOT and BIA<sup>1</sup> and leased to the Blackwell Northern Gateway Railroad Company (“BNGR”). BNGR currently has authority to operate the subject line (the “Blackwell Subdivision”).<sup>2</sup> ODOT and BIA are seeking this relief because the Federal Railroad Administration (“FRA”) has issued, in the interest of public safety, Emergency

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<sup>1</sup> The lines owned by ODOT extend from milepost 34.3, at Blackwell, OK, and milepost 18.0+ 1712.9 feet, at the Oklahoma/Kansas state line near Hun Newell, KS. BIA owns the segments of the line (1) between milepost 35.0+ 1848 feet, west of Blackwell, OK, and milepost 34.3, at Blackwell, OK, and (2) between milepost 18+ 1712.9 feet, at the Oklahoma/Kansas state line near Hun Newell, KS, and milepost 0+ 466.3 feet, at Wellington, KS. *See State of Oklahoma by and through the Oklahoma Department of Transportation and Blackwell Industrial Authority – Acquisition Exemption – Central Kansas Railway, L.L.C.* STB Finance Docket No. 33492 (served Oct. 31, 1997).

<sup>2</sup> *Blackwell Northern Gateway Railroad Company – Lease Exemption – Oklahoma Department of Transportation and Blackwell Industrial Authority.* STB Finance Docket No. 35441 (Sub-No. 1) (served Oct. 18, 2023).

Order No. 33, Notice No. 1, effective on February 3, 2024, a copy of which is attached as Exhibit A, to prevent BNGR from operating any trains or other on-track equipment. ODOT and BIA do not believe that the issues identified by FRA are likely to be resolved in the near-term. ODOT and BIA have provided notice to BNGR that ODOT and BIA intend to terminate the BNGR lease under which BNGR has been providing rail service on the Blackwell Subdivision. A copy of the notice is attached hereto as Exhibit B.

This Petition for an Emergency Service Order is supported by verified statements from BIA and impacted shippers Tensar International, LLC, the sole member of Tensar Corporation, LLC (“Tensar”) and A-Line T.D.S., Inc. (“A-Line T.D.S.”).

## **I. BACKGROUND**

### **A. Operations before the BNGR Shutdown**

ODOT and BIA are owners of the Blackwell Subdivision with each entity owning separate segments of the rail line.<sup>3</sup> ODOT and BIA entered into a joint Track Lease and Operating Agreement (the “Operating Agreement”) dated September 25, 2023, with BNGR for BNGR to provide common carrier rail service.

Currently, Tensar and A-Line T.D.S. utilize the Blackwell Subdivision for rail service. Tensar’s service prior to FRA’s emergency order prohibiting BNGR from railroad operations typically consisted of switching in 3 full cars at a time while switching out 3 empties. Tensar uses about 3 carloads every 10 operating days. However, Tensar has rail cars rolling toward it constantly to ensure it has an ample supply of raw material available, so BNGR may move rail cars on Tensar’s behalf several times during each 10-day operating span.<sup>4</sup> As stated in the Tensar VS, Tensar keeps extra supplies of its raw materials in rail cars to protect itself from supply chain

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> Verified Statement of Scott Edgecombe of Tensar (“Tensar VS”).

disruptions. This material is stored in rail cars off-site, Tensar relied on BNGR to provide service in retrieving and spotting cars from the extras that they keep available.<sup>5</sup> Currently, three carloads of raw materials are stranded on the BNGR line.

In its verified statement, Tensar states that it uses 4-5 railcars per month, but its rail service needs will increase to 7-8 rail cars per month as it intends to expand from a 10 on / 4 off schedule to a full 24/7/365 schedule in a March or April. Tensar further states that it is planning to expand its facility. Once plant expansion is approved and executed, it expects to ship 16-18 cars per month.

A-Line T.D.S. operates on-demand, and it utilizes railcars whenever BNGR can deliver them. A-Line T.D.S. receives empty cars, cleans them and then ships out used transformer oil to its buyers.<sup>6</sup>

Both shippers are now forced to find alternative means of transportation via motor carriage which is both more costly and less efficient. Both shippers want restoration of rail service as quickly as possible.

B. FRA Emergency Order Prohibiting Operations of Trains, Locomotives, and any other On-Track Rail Vehicles or Equipment.

On February 2, 2024, the FRA Administrator issued an order, effective February 3, finding that “the combination of unsafe conditions and practices” of BNGR created “an emergency situation involving a hazard of death or injury to persons.”<sup>7</sup> In summary, FRA determined that BNGR: “operated locomotives not safe for use under Federal law..., allowed locomotives to be operated by persons not properly qualified as engineers in accordance with FRA regulations..., and failed to qualify any engineers or conductors under any qualification program in accordance

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<sup>5</sup> *Id.*

<sup>6</sup> Verified Statement of Jon Lapczenski, A-Line T.D.S., Inc.

<sup>7</sup> See *Exhibit A*, Federal Railroad Administration, Emergency Order No. 33, Notice No. 1, Emergency Order to Prevent Operation of Trains and Other On-Track Rail Equipment on Blackwell Northern Gateway Railroad (“FRA EO 33”), 89 Fed Reg. 8739 (Feb. 8, 2024).

with FRA regulations.”<sup>8</sup> Further, FRA noted that BNGR did not maintain records of track safety inspections, records of employees designated and qualified to perform track inspections, and “records that roadway workers have been trained to use roadway maintenance machines or perform safety-essential functions in accordance with FRA regulations.”<sup>9</sup>

In addition, FRA stated that its investigation found that BNGR failed to report two derailments in accordance with FRA regulations, “persons not employed by the railroad and with no qualification under FRA regulations were allowed to operate locomotives,” and BNGR ownership directed BNGR employees to provide FRA false information, including a false engineer certification card and false hours of service records.<sup>10</sup> Lastly, FRA stated that BNGR has not provided it with documentation that the “railroad has a written program of operational tests and inspections on its operating rules in accordance with FRA regulations or the required training program for its safety-related employees.”<sup>11</sup>

In consideration of these findings, the FRA Administrator ordered “that BNGR must discontinue, and may not permit under any circumstances, the operations of trains, locomotives, or any other on-track rail vehicles or equipment on any part of the track that it owns or leases from ODOT or the BIA.”<sup>12</sup>

The FRA Emergency Order provides that BNGR may only resume operations and obtain full relief” from its order by taking fourteen actions demonstrating compliance with FRA regulations.<sup>13</sup>

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<sup>8</sup> FRA, EO 33, 89 Fed Reg. at 8740.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> FRA EO 33, 89 Fed Reg. at 8739.

<sup>13</sup> FRA EO, 89 Fed Reg. at 8740.

C. ODOT/BIA Letter to BNGR Notifying of Breach of the Track Lease and Operating Agreement.

On February 5, 2024, ODOT and BIA transmitted a letter to BNGR giving notice of default under the Operating Agreement.<sup>14</sup> As stated in the letter, the Operating Agreement provides that either party may terminate “[u]pon any occurrence of Default as provided for in Section 12.” And further that Section 12 of the Operating Agreement defines an event of default as “[u]pon the expiration of ninety (90) days’ written notice that a party has been prevented from fulfilling its obligations under the Operating Agreement as a result of legislative, judicial or other governmental action.” In consideration of the significant safety violations identified by FRA, ODOT and BIA issued a termination notice under Section 13.01(a) citing to the FRA’s Emergency Order. In discussions with counsel for BNGR, BNGR disputes whether it has defaulted under the Operating Agreement; however, it has indicated that it is conditionally willing to peacefully transfer its operating rights to a successor carrier.

D. Selection of Alternative Service Provider.

Since the FRA emergency order was issued and notice of default was provided to BNGR, ODOT and BIA have been diligently seeking out a qualified rail carrier that will be acceptable to the FRA and that is willing to provide temporary alternative service while they seek to arrange more permanent arrangements.<sup>15</sup> They have been arranging for site inspections and reviewing proposals. ODOT, BIA and Rock Island have now reached an agreement under which Rock Island

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<sup>14</sup> See *Exhibit B*, Letter from Blackwell Industrial Authority and Oklahoma Department of Transportation to Blackwell Northern Gateway Railroad (Feb. 5, 2024).

<sup>15</sup> Identifying an alternate service provider which committed to provide the service was required under 49 C.F.R. §1146.1(a)(iii) until the revised regulations adopted by the Board on January 24, 2024, in EP 762 became effective on February 23, 2024. Although under the current version of Section 1146.1(b)(iii) only requires that a petition identify “at least one possible rail carrier to provide alternative service,” ODOT and BIA are going further and identifying a railroad that has committed to provide the service.

would provide emergency service once the Board approves this petition. Rock Island's commitment to provide alternative rail service on the Blackwell Subdivision is set out in the Verified Statement of Robert Riley attached to this Petition.

## II. DISCUSSION

### A. The Legal Standard

Under 49 U.S.C. § 11123(a), “when the Board determines that...an unauthorized cessation of operations... or other failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers...or that a rail carrier providing transportation subject to the jurisdiction of the Board under this part cannot transport the traffic offered to it in a manner that properly serves the public”, the Board may (1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines; [and] (2) require joint or common use of railroad facilities.

The Board's regulations at 49 C.F.R. 1146.1(a) provides that “[a]lternative rail service ... will be prescribed” under Section 11123(a) “if the Board determines that, over an identified period of time, there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier.”<sup>16</sup>

### B. The FRA Emergency Order and related cessation of operations by BNGR justify the ODOT/BIA Joint Petition for an Emergency Service Order.

In accordance with 49 C.F.R. §1146.1(b)(1), ODOT and BIA hereby provides the following information in support of their petition for an emergency order.

*(i) A full explanation, together with all supporting evidence, to demonstrate that the standard for relief is met.*

The Board's standard for an Emergency Service Order contains two elements, (1) an

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<sup>16</sup> See *Arkansas Midland Railroad Company, Inc. – Alternative Rail Service – Line of Caddo Valley Railroad Company*, STB Finance Docket No. 35416 (served Sept. 17, 2010).



identified period of time, and (2) a measurable deterioration or other demonstrated inadequacy in rail service by the incumbent rail carrier. Here, prior to the issuance of the FRA Emergency Order, the two active shippers on the line were receiving regular service. Since the issuance of the FRA Emergency Order effective February 3, 2024 (3 weeks ago), shippers have not received any rail service. Nor will they receive any rail service from BNGR unless and until it can comply with FRA's fourteen actions demonstrating compliance. However, the severity of the infractions identified by FRA and the comprehensive action plan required by FRA for BNGR to reinstate rail service leaves ODOT and BIA, as owners of the Blackwell Subdivision, with no confidence that BNGR will ever be able to comply with FRA's compliance action plan and resume service to the shippers on the Blackwell Subdivision.

*(ii) A summary of the petitioner's discussions with the incumbent carrier of the service problems (including a description of the efforts taken to resolve the matter prior to filing of the petition, verified by a person or persons with knowledge of the efforts taken to resolve the matter), and the reasons why the incumbent carrier is unlikely to restore adequate rail service consistent with current transportation needs within a reasonable period of time.*

ODOT and BIA do not believe that BNGR is competent to safely operate the Blackwell Subdivision. FRA's Emergency Order ordering BNGR to cease any and all rail operations represents a default of the Operating Agreement and clear evidence that BNGR is unlikely to restore adequate rail service. Since BNGR is no longer able to fulfill its obligations under the Operating Agreement, ODOT and BIA transmitted a letter to BNGR giving notice of default of the Operating Agreement and termination of the agreement after ninety (90) days.

Counsel for ODOT spoke with counsel for BNGR on February 21, 23, and 26, 2024, to discuss the current situation and whether BNGR had any plans underway to address the required

FRA action plan. Counsel for BNGR confirmed that BNGR does not and has indicated to ODOT that BNGR does not object to the ODOT/BIA's filing of this petition.<sup>17</sup>

*(iii) In a petition that seeks alternative rail service, identification of at least one possible rail carrier to provide alternative service ...that would meet the current transportation needs of the petitioner.*

ODOT and BIA have identified Rock Island as a carrier that can meet the current transportation needs of the petitioners and of the shippers served over the Blackwell Subdivision, and who has committed to providing the alternative service requested in this Petition. *See* Verified Statement of Robert Riley attached hereto. Since the incumbent carrier BNGR is no longer permitted to operate or provide any service, the alternate carrier's operations will not interfere with the incumbent's ability to provide service.

*(iv) A detailed explanation of the specific remedy that is being sought.*

ODOT and BIA request that Rock Island be granted authority to provide all (alternative) rail service on the Blackwell Subdivision for a period of not less than 30 days and continuing until a long-term operator has been identified and receives authority from the Board. Rock Island's operations will not commence until the FRA has confirmed that it is qualified to operate on the rail lines.

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<sup>17</sup> The signature of counsel for ODOT on this Petition verifies the efforts taken to resolve the matter with the incumbent carrier.

C. Presumption of Continuing Need

Under 49 C.F.R. §1146.1(c), “a Board order ... shall establish a rebuttable presumption that the transportation emergency will continue for more than 30 days from the date of that order.”

Rock Island has committed to provide emergency service until and if BNGR is able to terminate the emergency service pursuant to 1146.1(d), or until a replacement operator has been authorized to provide long-term service.

D. Service

Enclosed with this Petition is a certificate of service certifying that ODOT and BIA have provided service of this Petition by email or by overnight delivery on BNGR, FRA, and Rock Island, and by email to [ServiceEmergency@stb.gov](mailto:ServiceEmergency@stb.gov), in accordance with the requirements of 49 C.F.R. §1146.1(e)

E. Time for Relief.

Counsel for BNGR has authorized the undersigned to state that BNGR does not oppose the relief requested in this Petition and will not be filing a reply. As such, there will be no need for ODOT and BIA to file a rebuttal. Accordingly, ODOT and BIA request that the Board issue a decision at the earliest possible time as permitted under the regulations.

## CONCLUSION

For the foregoing reasons, ODOT and BIA respectfully requests that, pursuant to 49 U.S.C. §11123 and 49 C.F.R. §1146.1, the Board issue an emergency service order allowing the Rock Island to provide alternative rail service to shippers on the Blackwell Subdivision for an initial period of no less than 30 days commencing on March 1, 2024, or as soon as the Board enters an order granting this Petition.

Respectfully submitted,



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*Attorneys for Oklahoma Department of  
Transportation*

Dated: February 26, 2024

## **Exhibit A**

**Emergency Order No. 33, Notice No. 1**

the FMCSA study was not comprehensive and that more questions needed to be asked to determine the full nature of the SASH problem. Key areas of concern included:

1. Sample design and categories of gender, sexual orientation, and ethnicity.
2. Types of questions asked to capture SASH and not using the latest standards in SASH research to design questions.
3. Development of appropriate and evaluated recommendations to inform actions for SASH prevention.

While the study framed the SASH issues in the industry and provided some preliminary data to understand magnitude, WOTAB's discussions on the study and other issues for women in the CMV industry indicated a need for additional research, especially to support improved participation of women in CMV careers. Additional research was suggested to support potential policy changes that would address improvements to current practices and reporting methods for drivers related to SASH, and to establish improved outreach and safety resources. WOTAB noted in particular that it is important to understand SASH with additional depth and breadth to ensure there is an awareness of the magnitude of SASH across the industry.

Therefore, FMCSA seeks to develop a comprehensive, expanded study that achieves a deeper framing and understanding of baseline data and issues related to SASH. FMCSA seeks input from stakeholders to help in the design of a new study.

### III. Request for Information

In developing the SASH study, FMCSA seeks input on the elements that should be included or considered. Please include answers to the following questions in your response:

1. What is the optimal study design to capture SASH information within the CMV industry, particularly among drivers? FMCSA is considering a survey and interview approach, as well as potential peer reviews of findings at key milestones throughout the study. What type of study design will best characterize the nature and scope of sexual assault and sexual harassment within the CMV industry that can be used to develop appropriate countermeasures?
2. What are best practices or methods for capturing gender identity information?
3. What are best practices to consider when asking demographic questions about sexual orientation and ethnicity?
4. Are there other categories of participant demographics that would

improve the study (*e.g.*, education, age, income, length of time in position (or in the industry), segment of the CMV industry, geographic region of operation, etc.)? Please be specific and provide rationale for including such questions, including how they may be used in characterizing the SASH problem and developing countermeasures and recommendations.

5. Who should be included (*i.e.*, targeted stakeholders) in a SASH study for the CMV industry?

6. What options exist to best incorporate stakeholder input and feedback throughout the study (*e.g.*, surveys, individual interviews, focus groups, or other formats)?

7. What research is available for designing and administering questions about SASH (*e.g.*, style of questions, sequencing, repetition, phrasing, etc.)?

8. What are the best methods to capture SASH issues and trends throughout the evolution of one's career (trainee, driver, other positions across the CMV industry (*e.g.*, manager, trainer, scheduler, safety employee, retiree, those who have left the industry)?

9. What are the optimum methods to capture the breadth of SASH? What categories of questions should FMCSA include that will ensure a comprehensive approach to the issue?

10. What are good practices for informing stakeholders and the public at key milestones during a long study? How can FMCSA best disseminate information (*e.g.*, literature review, preliminary results) to keep stakeholders informed without compromising the integrity of the study?

Issued under authority delegated in 49 CFR 1.87.

**Sue Lawless,**

*Acting Deputy Administrator.*

[FR Doc. 2024-02539 Filed 2-7-24; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Emergency Order No. 33, Notice No. 1]

#### Emergency Order To Prevent Operation of Trains and Other On-Track Rail Equipment on Blackwell Northern Gateway Railroad

**SUMMARY:** The Federal Railroad Administration (FRA) of the United States Department of Transportation has determined that public safety compels the issuance of an Emergency Order (Order) requiring the Blackwell Northern Gateway Railroad (BNGR) of

Blackwell, Oklahoma, to discontinue operation of all trains, locomotives, and any other on-track rail vehicles or equipment under any circumstances over any track BNGR leases or owns, including the rail line extending from milepost (MP) 0.09 at Wellington, Kansas, to MP 35.35 at Blackwell, Oklahoma, and from MP 127.0 to MP 125.0 at Blackwell until BNGR complies with all requirements of this Order.

**FOR FURTHER INFORMATION CONTACT:** Christian Holt, Staff Director, Operating Practices Division, Office of Railroad Safety at (202) 366-0978 or *Christian.Holt@dot.gov*; Elliott Gillooly, Attorney Adviser, Office of the Chief Counsel, at (202) 897-8666 or *Elliott.Gillooly@dot.gov*; or Veronica Chittim, Attorney Adviser, Office of the Chief Counsel, at (202) 480-3410 or *Veronica.Chittim@dot.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

As provided below, FRA has determined that public safety compels the issuance of this Order requiring BNGR to discontinue operations of all trains, locomotives, or any other on-track rail vehicles or equipment under any circumstances over any track it leases or owns, including the rail line extending from MP 0.09 at Wellington, Kansas, to MP 35.35 at Blackwell, Oklahoma, and from MP 127.0 to MP 125.0 at Blackwell until BNGR complies with all requirements of this Order.

##### Authority

Authority to enforce Federal railroad safety laws has been delegated by the U.S. Secretary of Transportation (Secretary) to the Administrator of FRA. 49 U.S.C. 103; 49 CFR 1.89(e). Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws. 49 U.S.C. 20101, 20103. FRA is authorized to issue emergency orders where "an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment." 49 U.S.C. 20104. Emergency orders may immediately impose "restrictions and prohibitions . . . that may be necessary to abate the situation." *Id.*

##### Background

BNGR operates on approximately 37 miles of rail line owned by the Oklahoma Department of Transportation (ODOT) and the Blackwell Industrial Authority (BIA). The line extends from Blackwell, Oklahoma, to Wellington, Kansas, where BNGR interchanges with

BNSF Railway. All track on the BNGR line is designated as “excepted” track, meaning that trains are limited to speeds of 10 miles per hour. BNGR operations on all track is further designated as “yard limits,” meaning that crews must be prepared to stop within one half the range of vision at all times when moving trains and engines. BNGR ownership changed on or about October 1, 2023. FRA is aware of several serious incidents that have occurred following the change in BNGR ownership, including two derailments and a highly dangerous movement of on-track equipment through an unprotected highway-rail grade crossing, narrowly missing a collision with a passenger vehicle.

FRA recently began investigating BNGR’s operations following a derailment that occurred on December 27, 2023. FRA has found that BNGR is operating with a complete disregard for the safety of the public and has not taken corrective action to resolve safety issues identified by FRA as posing imminent risks of injury or death. BNGR has, in its short time under current ownership, operated locomotives not safe for use under Federal law (49 U.S.C. 20701, 49 CFR part 229), allowed locomotives to be operated by persons not properly qualified as engineers in accordance with FRA regulations (49 CFR part 240), and failed to qualify any engineers or conductors under any qualification program in accordance with FRA regulations (49 CFR parts 240 and 242, respectively). BNGR has maintained no records of track safety inspections, no records of employees designated and qualified to perform track inspections, and no records that roadway workers have been trained to use roadway maintenance machines or perform safety-essential functions in accordance with FRA regulations (49 CFR parts 213 and 214).

Further, in violation of FRA regulations (49 CFR part 225), BNGR has failed to report, at a minimum, the two derailments that FRA has discovered through its investigation. In both derailments, the individual operating the derailed train was not properly qualified as an engineer in accordance with 49 CFR part 240, including at least one instance when the train’s locomotive was also several years past its required periodic inspection (*see* 49 CFR 229.23(a)). Additionally, there is evidence that persons not employed by the railroad and with no qualification under FRA regulations were allowed to operate locomotives (*see* 49 CFR 240.201(d)). Moreover, there is evidence BNGR employees have been directed by BNGR ownership to provide FRA false

information, including a false engineer certification card and false hours of service (HOS) records.

BNGR has created a public safety emergency through a willful failure to undertake basic responsibilities such as track inspection and training for safety-related railroad employees in combination with the deliberate actions of one or more individuals in positions of authority at this railroad. FRA has obtained substantial evidence that the most senior person on location at the BNGR, a co-owner of the railroad, has personally operated locomotives and trains on the BNGR line without the required training or qualification, leading to derailments, and has provided false information to FRA. Evidence also shows this individual has directed employees to act in ways that are unsafe and wholly contrary to a safety culture railroad employees expect and require to do their jobs properly, including directions to put locomotives into service not fit for use and prepare false HOS records. Aggravating all of the foregoing concerns, BNGR has not provided FRA with documentation that the railroad has a written program of operational tests and inspections on its operating rules in accordance with FRA regulations (49 CFR 217.9) or the required training program for its safety-related employees under 49 CFR part 243.

On January 17, 2024, FRA found no program for track inspection in compliance with FRA safety regulations (49 CFR part 213) and no inspection records for any month from the time the BNGR came under current ownership (October through December 2023). Following these findings, BNGR’s manager represented to FRA that all track over which BNGR operates would be taken out of service. Under 49 CFR part 213, any movements on track that is out of service for repairs must be authorized by a § 213.7 qualified person and be made only to facilitate repairs. *See* § 213.233(d).

On Sunday, January 28, 2024, witnesses reported that at approximately 5:15 p.m., C.S.T., an on-track hi-rail vehicle<sup>1</sup> nearly collided with a highway passenger vehicle at a highway-rail grade crossing at Doolin Avenue over the BNGR line near Blackwell, Oklahoma. This incident demonstrates a cascade of failures to protect life and safety by BNGR, as the grade crossing signal system at the

highway-rail grade crossing was not activated, no flag protection of the intersection was provided, and the hi-rail vehicle reportedly made no effort to stop and yield the right-of-way to vehicular traffic at the crossing, which is a customary railroad safety practice and often part of a railroad’s operating rules under 49 CFR part 217.

### Finding and Order

The evidence developed in FRA’s investigation of the BNGR has led FRA to conclude that continued operation of any rail equipment by BNGR on any part of its line poses an imminent threat to safety, including the threat of serious harm to persons employed by BNGR and the public. Further, the pattern of gross negligence and willful failures to comply with Federal safety regulations in multiple functional areas, including track safety, locomotive engineer qualification and certification, operating practices, and roadway worker safety, persuades FRA that reliance alone upon the assurances and cooperation of BNGR is not possible, consistent with public safety. Therefore, as the Administrator of FRA, I find that the combination of unsafe conditions and practices discussed above creates an emergency situation involving a hazard of death or injury to persons.

Accordingly, pursuant to the authority of 49 U.S.C. 20104, delegated to me by the Secretary, it is ordered that BNGR must discontinue, and may not permit under any circumstances, the operations of trains, locomotives, or any other on-track rail vehicles or equipment on any part of the track that it owns or leases from ODOT or the BIA, including all track between Wellington, Kansas, and Blackwell, Oklahoma, while this Order remains in effect. I direct that a copy of this Order be posted in a public location at the railroad’s office and a copy of the Order be provided to each employee of the railroad within 24 hours of the date of issuance.

FRA investigation of this railroad is ongoing, and FRA may take further steps to assure public safety. These steps may include additional notice(s) under this Order and/or other enforcement action.

### Relief

BNGR may only resume operations and obtain full relief from this Order by taking the following actions:

1. Submit to FRA for approval both a current, written program for certifying the qualification of engineers under 49 CFR part 240 and a current, written program for certifying the qualification

<sup>1</sup> A hi-rail vehicle is a roadway maintenance machine that is manufactured to meet Federal Motor Vehicle Safety Standards and is equipped with retractable flanged wheels so that the vehicle may travel over the highway or on railroad tracks. *See* 49 CFR 214.5.

of conductors under 49 CFR part 242. See 49 CFR 240.101; 49 CFR 242.101.

2. Submit to FRA for approval a list of conductors and engineers who have been certified under the written programs approved by FRA, with complete, written certification determinations for each individual as required under 49 CFR 240.109 for engineers, and 49 CFR 242.109 for conductors.

3. Submit to FRA for approval a written program of operational tests and inspections to be put in effect in accordance with 49 CFR 217.9.

4. Submit to FRA for approval a training program in compliance with 49 CFR part 243 for training, qualification, and oversight of safety-related railroad employees.

5. Submit to FRA for approval an on-track safety program that complies with the requirements of 49 CFR part 214, subpart C, and complete training and qualification records in accordance with that program for all employees who will engage in any on-track work or use of roadway maintenance machines.

6. Submit to FRA a list of designated, qualified persons responsible for maintenance and inspection of track in accordance with 49 CFR 213.7.

7. Accompany FRA track inspectors on a joint inspection of all BNGR track.

8. Complete all remedial actions noted by FRA for track defects identified following the joint inspection and submit records of all required track inspections after the completion of all remedial action.

9. Certify to FRA that a self-audit of HOS records has been completed and submit to FRA any records found to be incorrect or substantially incomplete with corrections to those records, to the extent possible.

10. Certify to FRA that all employees have been trained on HOS requirements under 49 CFR part 228; 49 U.S.C. ch. 211.

11. Certify to FRA that all employees have been trained on the requirements under 49 CFR part 225 to report accidents and incidents to FRA.

12. Submit to FRA all records of inspections required to be maintained under § 234.109 (system malfunction at highway-rail grade crossings).

13. Certify that all locomotives are in proper condition and fit for service in accordance with 49 U.S.C. ch. 207 and 49 CFR part 229.

14. Obtain approval from the FRA Administrator that all requirements of this Order have been met and properly performed.

To obtain relief, BNGR must take the actions described above and submit all required information and certifications

to *Christian.Holt@dot.gov* and subsequently inform the FRA Administrator in writing that it believes all of the requirements of this Order have been met. FRA will conduct verification inspections and will inform BNGR in writing whether it is in compliance with this Order so that the Order may be lifted. If FRA does not lift the Order, FRA's written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Order.

#### Partial Relief

For FRA to consider granting partial relief from this Order, BNGR must submit a written plan for approval to *Christian.Holt@dot.gov* that provides a detailed explanation of the partial relief sought, the specific measures that BNGR proposes to ensure the safety of any operations to be permitted, and the period of time for which such partial relief is sought.

Any partial relief provided will remain subject to BNGR's compliance with its approved written plan to provide safety measures, limitations on operations, and time periods for each component part of the partial relief. Failure to comply with any material provision of the approved plan will result in the partial relief being revoked.

#### Penalties

Any violation of this Order or the terms of any approved written plan pursuant to this Order subjects the person (railroad carrier) committing the violation to a civil penalty of up to \$35,516 for ordinary violations and \$142,063 for aggravated violations for each day the violation continues. 49 U.S.C. 21301; 88 FR 89551 (Dec. 28, 2023). Any individual (railroad personnel) who willfully violates a provision stated in this Order is subject to civil penalties under 49 U.S.C. 21301. In addition, such an individual (railroad personnel) whose violation of this Order demonstrates the individual's unfitness for safety-sensitive service may be removed from safety-sensitive service on the railroad under 49 U.S.C. 20111.

If appropriate, FRA may pursue criminal penalties under 49 U.S.C. 522(a) and 49 U.S.C. 21311(a), as well as 18 U.S.C. 1001, for the knowing and willful falsification of a report required by this Order. FRA may, through the Attorney General, also seek injunctive relief to enforce this Order. 49 U.S.C. 20112.

#### Effective Date and Notice to Affected Persons

This Order takes effect at 12:01 a.m., C.S.T., on February 3, 2024, and applies

to operations of all trains, locomotives, and any other on-track rail vehicles or equipment. Notice of this Order will be provided by publishing it in the **Federal Register**. Copies of this Order will be sent by email prior to publication to BNGR, ODOT, and BIA.

#### Review

Opportunity for formal review of this Order will be provided in accordance with 49 U.S.C. 20104(b) and 5 U.S.C. 554. Administrative procedures governing such review are found at 49 CFR part 211. See 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC, on February 2, 2024.

**Amitabha Bose,**  
Administrator.

[FR Doc. 2024-02536 Filed 2-7-24; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### FY 2024 Competitive Funding Opportunity: Low or No Emission Grant Program and the Grants for Buses and Bus Facilities Competitive Program

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of funding opportunity (NOFO).

**SUMMARY:** The Federal Transit Administration (FTA) announces the opportunity to apply for approximately \$1.10 billion in competitive grants under the fiscal year (FY) 2024 Low or No Emission Grant Program (Low-No Program) (Federal Assistance Listing: 20.526) and approximately \$390 million in competitive grants under the FY 2024 Grants for Buses and Bus Facilities Program (Buses and Bus Facilities Program) (Federal Assistance Listing 20.526), subject to availability of appropriated funding.

**DATES:** Complete proposals must be submitted electronically through the *GRANTS.GOV* "APPLY" function by 11:59 p.m. eastern time on April 25, 2024. Prospective applicants should initiate the process by registering on the *GRANTS.GOV* website promptly to ensure completion of the application process before the submission deadline.

**ADDRESSES:** Instructions for applying can be found on FTA's website at <https://www.transit.dot.gov/howtoapply> and in the "FIND" module of *GRANTS.GOV*. The funding opportunity ID is FTA-2024-003-TPM-



## **Exhibit B**

**Letter from ODOT and BIA to BNGR**



Blackwell Economic Development  
& Industrial Authority  
PO Box 150; 515 N 25<sup>th</sup> St.  
Blackwell, OK 74631

Blackwell Industrial Authority  
515 N 25<sup>th</sup> Street  
Blackwell, OK 74631

February 5, 2024

Blackwell Northern Gateway Railroad  
Attn: Noah McCann  
408 ½ N 20<sup>th</sup> Street  
Blackwell, OK 74631

**Re: Termination of Lease Operating Agreement** dated 9/25/2023, by and among the State of Oklahoma, acting through its administrative agency, Oklahoma Transportation (collectively the "STATE"), Blackwell Industrial Authority ("BIA") and Blackwell Northern Gateway Railroad Company ("RAILROAD")

Mr. McCann,

This letter serves as notice that the above referenced lease operating agreement between BIA, STATE, and RAILROAD, is hereby given notice to default per section 12.01 (d) Upon the expiration of ninety (90) days' written notice that a party has been prevented from fulfilling its obligations under the Operating Agreement as a result of legislative, judicial or other governmental action.

Per the terms of the agreement, the termination of the Operating Agreement in 90 days from this notice, is valid under Section 13.01 (a)

The default is confirmed by the FRA Emergency Order 33 BNGR that was emailed to you on Friday, February 2, 2024 at 4:27 p.m. by the USODOT/Federal Railroad Administration. Due to this Emergency Order, the BIA and STATE will find a temporary emergency service operator.

Please refer to the above-referenced Operating Agreement or you may contact the BIA or STATE for further information.

Oklahoma Department of Transportation

  
\_\_\_\_\_  
Multi-Model Division Engineer

Blackwell Industrial Authority

  
\_\_\_\_\_  
Executive Director

## **Verified Statements**

**Charlene Flanery, Blackwell Industrial Authority**

**Scott Edgecombe, Tensar International, LLC**

**Jon Lapczenski, A-Line T.D.S., Inc.**

**Robert Riley, Chicago, Rock Island & Pacific Railroad LLC**

**Before the**  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36762

**STATE OF OKLAHOMA BY AND THROUGH THE  
OKLAHOMA DEPARTMENT OF TRANSPORTATION  
AND BLACKWELL INDUSTRIAL AUTHORITY  
– ALTERNATIVE RAIL SERVICE –  
LINE OF BLACKWELL NORTHERN GATEWAY RAILROAD COMPANY**

**VERIFIED STATEMENT OF CHARLENE FLANERY, EXECUTIVE DIRECTOR  
BLACKWELL ECONOMIC DEVELOPMENT & INDUSTRIAL AUTHORITY**

My name is Charlene Flanery, I am the Executive Director of the Blackwell Industrial Authority (BIA) in Blackwell, OK near the Oklahoma/Kansas border. BIA owns the Kansas segment of the rail line that has been leased to and operated by Blackwell Northern Gateway Railroad (BNGR) before the Federal Railroad Administration ordered BNGR to stop all operations.

BIA is joining the Oklahoma Department of Transportation (ODOT) in this petition because restoring rail service to customers that were being served by BNGR is absolutely critical for the continued economic development of the City of Blackwell.

The City of Blackwell has a population of 6,071 and is largely a farming, oil and gas and manufacturing town. The mission of BIA is to promote the development of industry for the benefit of City of Blackwell. We support existing businesses seeking expansion and growth opportunities and we work to attract new business to Blackwell.

One of these companies is Tensar Corporation, LLC (Tensar). Tensar is a multi-national corporation serving the construction industry. Its continued operation in Blackwell requires access to the interstate rail network to receive the raw materials used in their manufacturing process. The

City of Blackwell is grateful to be the home of Tensar for the jobs it creates and because it is a large energy consumer which results in an additional \$360,000 in utility sales that benefit the City of Blackwell.

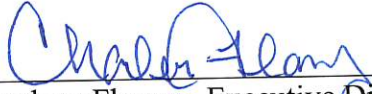
In addition, rail service is critical to the future growth of Tensar in Blackwell. Tensar has plans for a multi-million capital expansion project within the next 24 months which will create more than 20 NEW jobs resulting in an additional of \$850,000 to their annual payroll. The expansion would also result in the need for additional rail service.

With the disruption of rail service, the community stands to lose the expansion project which would result in an economic impact loss of over \$18.2 million. The BIA respectfully requests the help and assistance of the Board to consider emergency services to be provided by a new operator, satisfactory to the Board and the Federal Railroad Administration until a long-term solution can be developed.

**VERIFICATION**

I hereby verify on behalf of Blackwell ~~Economic Development~~ and Industrial Authority under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on February 26, 2024.

  
\_\_\_\_\_  
Charlene Flanery, Executive Director

**Before the**  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD ~~XXXXXX~~ 36762

**STATE OF OKLAHOMA BY AND THROUGH THE  
OKLAHOMA DEPARTMENT OF TRANSPORTATION AND  
BLACKWELL INDUSTRIAL AUTHORITY  
- ALTERNATIVE RAIL SERVICE -  
LINE OF BLACKWELL NORTHERN GATEWAY RAILROAD COMPANY**

**VERIFIED STATEMENT OF SCOTT EDGECOMBE**

My name is Scott Edgecombe, and I am the President of Tensar International, LLC, which is the sole member of Tensar Corporation, LLC ("Tensar"). Tensar manufactures and distributes geosynthetic products or geogrids. These products have many applications, including, but not limited to applications in road building, railroad tracks, walls and slopes, and structure foundation support. In Blackwell, Oklahoma we have a manufacturing facility that relies heavily on rail service.

Currently, at our Blackwell facility, we receive railcar loads of polypropylene resin, our primary raw material, by rail. Our Blackwell facility receives this commodity via interchange with BNSF in Wellington, KS with the Blackwell Northern Gateway Railroad (BNG). From Wellington, Kansas, the BNG hauls the rail cars down to Blackwell, stores them as needed on BNG track in Blackwell, before placement on our siding at the plant site. We typically switch in 3 full cars at a time while switching out 3 empties. We use about 3 cars every 10 operating days. We have rail cars rolling toward us all the time so that we always have a ready supply of polypropylene resin on hand. As a result, the BNG may be touching or moving rail cars on our behalf (but not necessarily on our property) several times during every 10-day operating span.

Our production line relies on or requires polypropylene resin; so prompt, efficient rail service is imperative to our operation. Because rail transportation is often less reliable (but significantly cheaper) than bulk truck transportation, we build in extra time to make sure we always have a supply at the plant. In the event of hiccups in the supply chain, we rely on the BNG to provide service in retrieving and spotting cars from the extras that we keep on hand; these rail cars can be retrieved with minimal notice, any day of the week.

Currently, we use 4-5 railcars per month, but our rail service needs will increase to 7-8 rail cars per month shortly as we expand from a 10 on 4 off schedule to a full 24/7/365 schedule in a month or two. We are planning to expand this facility, and after plant expansion is approved and executed, we will ship 16-18 rail cars per month.

We are incurring significant additional costs by bulk trucking polymer into the plant while the Federal Railroad Administration emergency order is in effect. The polypropylene resin currently is being trucked from bulk terminals in Tulsa, Oklahoma and from Oklahoma City. Each shipment via motor carrier increases our costs and eliminates the flexibility gained by having this raw material stored nearby in rail cars. At the current consumption level of four (4) to five (5) rail carloads per month, the increased cost is approximately \$25,000 to \$30,000 per month, and our consumption of polypropylene resin is expected to increase in the coming months.

This disruption in rail service is also causing our personnel to divert their focus from running our plant to trying to coordinate with vendors and transportation providers in order to ensure we have a ready supply of raw material. The result is a loss of efficiency in our plant's operation. Additionally, the shutdown in rail operations by BNG has effectively stranded three carloads of polypropylene resin on the BNG track in Blackwell. The Tensar plant will need



access to that resin and is concerned about whether these stranded rail cars will be vulnerable to theft or damage if BNG is no longer functioning as a rail carrier. Presently, Tensar has no practical way of moving those three cars from the carrier's track to the plant. This is raw material that has been purchased and that cannot be delivered. Overall, this disruption in Blackwell has caused our corporate leadership to question the viability of our proposed multi-million dollar capital expansion. Our leadership team understands that rail service is highly beneficial because it lowers Tensar's operating costs and provides enhanced operational flexibility. The length of time it has taken to get any traction toward solving the issue is problematic. Further delay without a clear timeline to resolution puts a brighter spotlight on the issue and puts more doubt in the minds of our corporate leadership.

## VERIFICATION

I hereby verify on behalf of Tensar Corporation, LLC, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on February 22, 2024.

A handwritten signature in blue ink, reading "Scott A. Edgecombe", is written over a horizontal line.

Scott Edgecombe, President of Tensar International, LLC, the Sole Member of Tensar Corporation, LLC

**Before the**  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD ~~XXXXX~~ 36762

**STATE OF OKLAHOMA BY AND THROUGH THE  
OKLAHOMA DEPARTMENT OF TRANSPORTATION  
AND BLACKWELL INDUSTRIAL AUTHORITY  
– ALTERNATIVE RAIL SERVICE –  
LINE OF BLACKWELL NORTHERN GATEWAY RAILROAD COMPANY**

**VERIFIED STATEMENT OF A-LINE T.D.S., INC**

My name is Jon Lapczenski, and I am the President of A-LINE T.D.S., Inc. We specialize in providing environmentally safe disposal of electrical transformers and associated electrical equipment. We are located in Tonkawa, Oklahoma. We utilize the Blackwell Northern Gateway Railroad (BNG) rail line to ship transformer oil and other marketable products.

The nature of our transformer disposal business is such that we maintain an on-demand business. Therefore, and depending on market conditions, we could likely load and ship railcars with oil just as quickly as the operator would allow. Prior to the cessation of rail operations, we would routinely clean then load tank cars at the BNG site in Blackwell. BNG would let us know when they were pulling and dropping cars so we could turn them quicker.

The current cessation in service has meant that we must shift our operations over to trucking the transformer oil to our customers which is a more costly and less efficient service.

## VERIFICATION

I hereby verify on behalf of A-LINE T.D.S., under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on February 22, 2024.

  
\_\_\_\_\_  
Jon Lapczenski

**Before the**  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36762

**STATE OF OKLAHOMA BY AND THROUGH THE  
OKLAHOMA DEPARTMENT OF TRANSPORTATION  
AND BLACKWELL INDUSTRIAL AUTHORITY  
– ALTERNATIVE RAIL SERVICE –  
LINE OF BLACKWELL NORTHERN GATEWAY RAILROAD COMPANY**

**VERIFIED STATEMENT OF ROBERT RILEY, CEO CHICAGO, ROCK ISLAND &  
PACIFIC RAILROAD LLC**

My name is Robert Riley, I am the CEO of the Chicago, Rock Island & Pacific Railroad LLC (the “Rock Island”). The Rock Island is a rail carrier and a short line holding company controlling two other Class III rail carriers.<sup>1</sup> In addition, the Rock Island provides various non-common carrier railroad services including switching, railcar storage, locomotive maintenance, railcar fleet management, and railroad management.

As explained in the Petition for Emergency Service, the Blackwell Northern Gateway Railroad Company (“BNGR”) is unable to continue operations on the Blackwell Subdivision as a result of the Federal Railroad Administration (“FRA”), Emergency Order No. 33. The Rock Island has agreed with the Oklahoma Department of Transportation and Blackwell Industrial Authority on the terms that will cover its operation of the Blackwell Subdivision, and the Rock Island is committed to offering rail service under the Petition for Emergency Service on the agreed upon terms.

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<sup>1</sup> *Chicago, Rock Island & Pacific Railroad LLC – Continuance in Control Exemption – Ottawa Northern Railroad LLC*, STB Finance Docket No. 36675 (served Mar.15, 2023); *Chicago, Rock Island & Pacific Railroad LLC – Continuance in Control Exemption – Gulf & Ship Island Railroad LLC*, STB Finance Docket No. 36520 (served June 8, 2021).

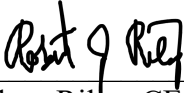
Due to the fact that the BNGR is prohibited by the FRA from operating on the Blackwell Subdivision, no coordination of operations between the Rock Island and BNGR will be necessary. Rock Island Rail's operations will not commence until the FRA has confirmed that it is qualified to operate on the rail lines.

The complete name, address and telephone number of the Rock Island is the Chicago Rock Island & Pacific Railroad LLC, 165 W. South St. Suite 201, Hernando, Miss.

## VERIFICATION

I hereby verify on behalf of Chicago, Rock Island & Pacific Railroad LLC under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on February 26, 2024.

  
\_\_\_\_\_  
Robert Riley, CEO

## CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Petition for Emergency Service was served on the following by email, hand or by overnight delivery:

Federal Railroad Administration

Christian Holt, Office of Railroad Safety  
Elliott Gillooly, Office of Chief Counsel  
Veronica Chittim, Office of Chief Counsel  
[Christian.holt@dot.gov](mailto:Christian.holt@dot.gov)  
[Elliott.gillooly@dot.gov](mailto:Elliott.gillooly@dot.gov)  
[Veronica.chittim@dot.gov](mailto:Veronica.chittim@dot.gov)

Surface Transportation Board

[ServiceEmergency@stb.gov](mailto:ServiceEmergency@stb.gov)

Chicago, Rock Island & Pacific Railroad, LLC

Robert Riley, CEO  
[Robert.riley@rockislandrail.com](mailto:Robert.riley@rockislandrail.com)

Blackwell Northern Gateway Railroad  
Company

Robert Wimbish, Fletcher-Sippel  
[rwimbish@fletcher-sippel.com](mailto:rwimbish@fletcher-sippel.com)



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Justin J. Marks

Dated: February 26, 2024