



KAPLAN KIRSCH ROCKWELL

December 8, 2008

Via E-Filing

PUBLIC VERSION

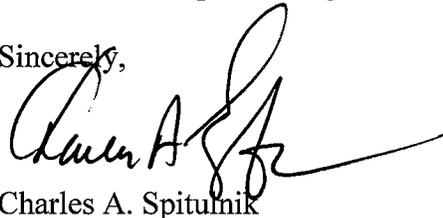
Honorable Anne Quinlan
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Petition for Declaratory Order
Finance Docket No. 35157

Dear Ms. Quinlan:

I am attaching the Public Version of the Reply of the City of Alexandria, Virginia to Decision Served November 6, 2008 in the above-referenced proceeding.

Sincerely,



Charles A. Spitulnik

Attachment

203794

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35157

**PETITION OF THE CITY OF ALEXANDRIA, VIRGINIA
FOR DECLARATORY ORDER**

**REPLY OF THE CITY OF ALEXANDRIA, VIRGINIA
TO DECISION SERVED NOVEMBER 6, 2008**

Communications with respect to this document
should be addressed to:

Ignacio B. Pessoa
Christopher P. Spera
Office of the City Attorney
301 King Street, Suite 1300
Alexandria, VA 22314
(703) 838-4433

Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
Meredith G. Miller
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

Attorneys for the City of Alexandria, Virginia

Dated: December 8, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35157

**PETITION OF THE CITY OF ALEXANDRIA, VIRGINIA
FOR DECLARATORY ORDER**

**REPLY OF THE CITY OF ALEXANDRIA, VIRGINIA
TO DECISION SERVED NOVEMBER 6, 2008**

INTRODUCTION

The question before the Surface Transportation Board (“STB” or “the Board”) in this proceeding is whether the ICC Termination Act of 1995 (“ICCTA”), 49 U.S.C. §§ 10901 *et seq.*, preempts the City of Alexandria’s (the “City’s”) authority to regulate the ethanol transloading conducted by RSI Leasing, Inc. (“RSI”) at the Van Dorn Yard transloading facility (“the Facility”), a yard owned by Norfolk Southern Railroad Co. (“NSRC”). Following its well-established precedent that the question whether a given transloading operation is within the Board’s jurisdiction is a fact-specific inquiry,¹ the Board instituted this declaratory proceeding in a Decision issued on November 6, 2008. *The City of Alexandria, VA – Petition for Declaratory Order*, STB Finance Docket No. 35157, slip op. at 4 (STB Service Date Nov. 6, 2008) (the “November 6 Decision”). Although the *November 6 Decision* denied the City’s request to take discovery, the Board directed the parties to submit further information in order to provide a complete factual basis for the final decision.

NSRC’s Response offers carefully selected facts in its attempt to provide support for the position that the RSI operation at the Van Dorn Yard is within the Board’s jurisdiction.

¹ *Town of Babylon and Pinelawn Cemetery – Petition for Declaratory Order*, STB Finance Docket No. 35057 (STB Served Feb. 1, 2008), slip op. at 2.

Although the City does not dispute the accuracy of most of those selected facts, NSRC did not provide all the facts relevant to the Board's inquiry, thereby presenting an incomplete and therefore misleading picture of the transloading operation. In particular, the testimony of NSRC and RSI employees in litigation between the City and NSRC and RSI in ongoing litigation before the U.S. District Court for the Eastern District of Virginia, as well as a close analysis of the contract between NSRC and RSI, make clear that this transloading operation is more similar to the transloading operations in cases where the Board declined to extend its jurisdiction, such as *Town of Babylon, supra*; *Town of Milford, MA – Petition for Declaratory Order*, STB Finance Docket No. 34444 (STB Served Aug. 12, 2004) and *Hi-Tech Trans., LLC – Petition for Declaratory Order – Newark, NJ*, STB Finance Docket No. 34192 (Sub-No. 1) (STB Served Aug. 14, 2003).

Accordingly, the City provides additional information responsive to the *November 6 Decision* focusing in particular on the following questions posed by the Board:

- Who schedules the transloading, and who collects the fees for the transloading?
- What is the extent of the involvement of RSI and its affiliates in the ownership and construction of the Facility, delivery of the ethanol to the tank cars, the unloading activities that take place at the Facility, and redelivery of the ethanol to blending facilities?
- What specific measures does NS take to control, monitor, and supervise the operation of the Facility?

November 6 Decision at 4.

DISCUSSION

NSRC Does Not Conduct the Ethanol Transloading Operation

To put this issue in complete context, [

] Deposition of David Lawson, p. 34 (Oct. 16,

2008), excerpts of which are attached as Exhibit A. Instead of hiring its own personnel to carry

out transloading at facilities throughout the NSRC system, the railroad engages “independent contractors who are experts in bulk transfer and distribution” to run its facilities. *See* <http://www.nscorp.com/nscportal/nscorp/Customers/Distribution%20Network/Facilities/Bulk.html?facilityType=BULK>. Many of these NSRC-owned facilities are marketed as Thoroughbred Bulk Transfer (“TBT”) terminals.

RSI is one those expert independent contractors upon whom NSRC relies to conduct transloading operations. RSI operates transloading facilities adjacent to NSRC rails in Buffalo, NY; Baltimore, MD; Grand Rapids, MI; Petersburg, VA; and Somerset, KY. *See* <http://rsilogistics.com/terminals.aspx>. While RSI leases the terminal property from NSRC in Buffalo, it operates at the other four locations under license as TBT terminals. Deposition of Kelley Minnehan, pp. 12-14 (Sept. 17, 2008), excerpts of which are attached as Exhibit B.

NSRC’s relationship with RSI at the Van Dorn Facility is structured differently, although the net result is that RSI conducts, and is ultimately responsible for, all aspects of the actual, physical transloading of ethanol from tank car to truck. Rather than a lease or license agreement, a contract defines the relationship between NSRC and RSI at the Facility. NSRC has structured the contractual relationship between the parties to make it appear as if NSRC is ultimately in control of the transloading operation. But as detailed below, that appearance is not borne out by the substance of Contract No. 19543 between NSRC and RSI.

That NSRC’s role in the Facility is minimal is made evident at a global level by its frank acknowledgement that the Contract is designed to take advantage of the federal preemption provisions of the ICCTA. When asked why NSRC chose to engage RSI as a contractor at the Facility instead of as a licensee or lessee as it has in all other locations, David Lawson, Vice President of Industrial Products, NSRC, stated that one factor driving that decision was [

] Lawson Dep., pp. 30-31. If NSRC actually had that control over the process, the Board's analysis here might have a different outcome. However, the facts confirm that NSRC has at best a superficial level of control.

Moreover, this simply begs a more fundamental question: If NSRC wanted the benefits of ICCTA preemption, why not perform the transloading itself? In the end, it is clear that NSRC wants the benefits of a transloading facility located adjacent to its line in the City without the burdens of such an operation. Thus it has structured the Contract with RSI in a way that creates the appearance of NSRC control, while in fact shifting to RSI control and responsibility, both physical and financial, for virtually every aspect of the transloading operation, including bearing the financial responsibility to shippers for the transloading.

RSI Performs All Transloading Tasks

As an initial matter, RSI was involved in the planning and construction of the Facility in Alexandria from early on. Because RSI has expertise in the field of bulk commodity transloading, and because NSRC planned from the start to engage RSI as a contractor to run the Facility, NSRC consulted with RSI numerous times during construction of the Facility – before a contract was in place between them – to ensure that the infrastructure would support its business plans. *See, e.g.*, E-mail from Charlie McMillan, NSRC, to Chris Birck and Kelley Minnehan, RSI, April 20, 2007 (sharing revised bid sheet for construction of the Facility), attached as Exhibit C; E-mail from Kelley Minnehan, RSI, to Mike Webb, NSRC, Nov. 9, 2007 (“I was just

at Alexandria yesterday . . . looking over the work the contractor was doing on the water line”), attached as Exhibit D. So while RSI does not have an ownership interest in the property, it played a key role in developing the Facility.

Having played a key role in the design of the Facility, RSI performs virtually all the functions required to transload ethanol at the Facility:

- RSI performs the physical labor involved in the day-to-day transloading process. Contract No. 19543, ¶ A.A.(ii), attached to NRSC’s July 2, 2008 Response to Petition for Declaratory Order as Appendix P; Deposition of Anthony Rosenthal, pp. 21-28 (Sept. 17, 2008), attached hereto as Exhibit E.
- RSI owns the equipment required to run the transloading operation, including the portable pumps and hoses. Contract No. 19543, ¶ 1.A.(ii).xiii; Minnehan Dep., p. 20.
- RSI coordinates with trucking companies regarding transloading schedules. Rosenthal Dep., pp. 62-68 & 76-79.
- RSI coordinates with truck drivers regarding the required paperwork and movement of trucks into and out of the Facility. Rosenthal Dep., pp. 76-80 & 124.
- RSI directs NSRC to remove specific tank cars when they are empty and to place full tank cars in specific positions on the transloading track at the Facility. Rosenthal Dep., pp. 53 & 116-121; Deposition of James Reiner, pp. 25-27 (Sept. 19, 2008), attached as Exhibit F.
- RSI calculates the track occupancy charges (“TOCs”) required under the Contract and Tariff 9238-E and serves as NSRC’s billing agent to collect those charges. Contract No. 19543, App. C; Minnehan Dep., pp. 33-34 & 38-39.
- RSI is liable for damage to property caused during transloading operations and must insure against such damage. Contract No. 19543, ¶ 3.C.
- RSI is liable to shippers for any failure to transload ethanol pursuant to their agreements with NSRC. Contract No. 19543, ¶ 1.G.
- RSI must provide security for the Facility. Contract No. 19543, ¶ 1.A.(ii).ix.
- RSI is partially liable for any untraceable site environmental contamination at the Facility since transloading operations began. Contract No. 19543, ¶ 3.A.d.

In addition to supplying all the expertise and physical labor required to transload ethanol at the Facility, RSI also performs all the communication and scheduling tasks that are required for the operation to run successfully. The first notification that RSI receives that tank cars laden with ethanol are bound for the Van Dorn Yard to be transloaded is an e-mail from the shippers themselves directly to Anthony Rosenthal, RSI Terminal Manager at the Facility. Rosenthal Dep., pp. 40-41. RSI next receives notification from NSRC that the tank cars have arrived in Alexandria and are available for transloading. *Id.* at p. 41. Loaded tank cars remain on storage tracks until RSI receives notice from the ethanol receivers that tank trucks are to be dispatched to the Facility to pick up ethanol. *Id.* at 63-65. RSI then directs NSRC to switch the required tank cars onto the transloading track in the Facility by providing a switch list to NSRC Central Yard Operations in Atlanta. *Id.* at pp. 51-53. RSI communicates with the trucking companies and ethanol receivers regarding their arrival and transloading schedule, generates bills of lading for the ethanol, and conducts the transloading in its entirety. *Id.* at pp. 56, 63-65 & 72. RSI also follows up with the receivers after each transload to verify that it occurred. *Id.* at pp. 69-72.

In contrast, NSRC has virtually nothing to do with coordinating the schedule for transloading ethanol at the Facility. In its response to the Board's question about scheduling, NSRC provides no information about NSRC's role and describes RSI's role vaguely as providing "an interface" with each receiver of ethanol. Its role as "interface" is, in fact, to provide all communication, coordination and transloading services necessary to transload the ethanol.

NSRC's limited role in the transloading operation is seen further in the discrete and limited other roles it plays in connection with the transloading:

- [] Lawson Dep., pp. 36 & 41.

- []. *Id.* at pp. 40-41.
- NSRC switches the rail cars into and out of the Facility but only at the direction of RSI. Reiner Dep., pp. 25-27.
- [] and pays for certain maintenance of the yard surrounding the facility. Minnehan Dep., p. 19; Lawson Dep., pp. 12-14.
- NSRC pays RSI a fee for each gallon of ethanol transloaded at the Facility and a percentage of all billed TOCs. Contract No. 19543, App. C.

RSI Is Ultimately Responsible For Transloading

NSRC correctly points out that it enters into shipping contracts that include transloading as part of a bundled service. However, that fact by itself should not be dispositive if the railroad does not also have control over and responsibility for the transloading. As detailed above, NSRC does not control the transloading; review of the Contract makes it clear that RSI, not NSRC, has ultimate financial responsibility for the transloading.

Pursuant to the Contract between RSI and NSRC, RSI will indemnify NSRC for “any actions” filed against the railroad related to completion of its contractual duties. Contract No. 19543, ¶ 1.G. Thus, even though NSRC has entered into the contracts to provide transloading services, RSI is responsible in every sense for the execution of those contracts. RSI’s fundamental assumption of the responsibilities, liability and burdens of the transloading operation is further reflected in other provisions of the RSI Contract:

- RSI is required to provide security for the Facility, even though it does not own or lease the site. Contract No. 19543, ¶ 1.A.(ii).ix.
- RSI agreed to share liability for indeterminate environmental contamination at the Facility. Contract No. 19543, ¶ 3.A.d.
- RSI is responsible for “all normal maintenance, repair and replacement to and of the Facility and its constituent parts, including but not limited to plumbing, lights, wash systems, compressors, wash facilities, scales, gates, meters, and lights, and for any required certification thereof.” Contract No. 19543, App. B, ¶ (M).

- RSI is required to insure against damages caused by truckers receiving transloaded ethanol at the Facility. Contract No. 19543, App. E, ¶ 6(d); Minnehan Dep., p. 44.

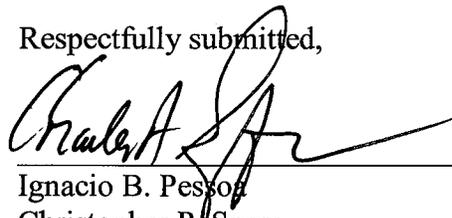
Collectively, these provisions effectively shift the physical and financial risks and burdens of the transloading operation from NSRC to RSI. Notwithstanding NSRC's efforts to create the illusion that it is responsible for this service, the reality of the circumstances demonstrates that in fact RSI is the key player here. While the railroad is "holding itself out as providing the services" and is "interact[ing] with the shippers, quot[ing] rates, bill[ing] and collect[ing], *see Canadian National Ry. Co. v. City of Rockwood*, 2005 WL 1349077 (E.D. Mich. 2005), the above explanation of the full spectrum of services involved and of the control over what occurs at the Facility confirms that the services there are not provided by NSRC. If NSRC first held itself out as the provider of this service - which it does - and second, actually conducted or controlled the operation - which it does not - then NSRC might be able to claim legitimately that this is a railroad operation.

The lack of NSRC control over what actually occurs here distinguishes this facility from the one at issue in the *Canadian National* case. While NSRC includes the service as part of its contracts, the facts confirm that it is not controlling this operation. Courts and this Board have recognized that in each case, the substance of what occurs must control, not the form that may be offered to the public, as a means of evading local scrutiny. *See, e.g., Lone Star Steel Co. v. McGee*, 380 F.2d 640, 648 (5th Cir. 1967) ("whether a transportation agency is a common carrier depends not upon its corporate character or declared purposes, but upon what it does.") (internal quotations omitted). Where, as here, the transloading is in reality fully within the control of RSI not NSRC, the Board should not allow NSRC to succeed in its attempts to wrap this essentially non-railroad operation in the cloak of preemption.

CONCLUSION

Transloading is not part of NSRC's business, whether at the Alexandria Facility or elsewhere. At the Facility, RSI performs the transloading itself and all the coordination and communication with NSRC, shippers, receivers and truckers necessary to carry out the transloading operation. RSI has assumed ultimate financial responsibility for virtually every aspect of the transloading operation, from maintenance, to property damage, to performance of the contract to transload. By every meaningful measure of control and responsibility, the Facility is an RSI transloading facility that is not subject to the Board's jurisdiction. Given those facts, NSRC's transparent attempt to use its name to invoke the Board's jurisdiction over the Facility is insufficient and must be rejected. Accordingly, the City respectfully requests a Declaratory Order affirming its authority to regulate the Facility under the laws of Virginia and the City of Alexandria.

Respectfully submitted,



Ignacio B. Pessora
Christopher P. Spera
Office of the City Attorney
301 King Street, Suite 1300
Alexandria, VA 22314
(703) 838-4433

Charles A. Spitulnik
W. Eric Pilsch
Allison I. Fultz
Meredith G. Miller
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

Attorneys for the City of Alexandria, Virginia

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2008, a copy of the foregoing Public Version of the Response of the City of Alexandria, Virginia to Decision Served November 6, 2008, was served by first class mail, postage prepaid, upon the following:

John V. Edwards
Senior General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

Gary A. Bryant
Wilcox & Savage, P.C.
One Commercial Place
Suite 1800
Norfolk, VA 23510



Charles A. Spitulnik

203285v6

EXHIBIT A

1 UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF EASTERN DISTRICT OF VIRGINIA
 3 ALEXANDRIA DIVISION

4 - - - - -x

5 NORFOLK SOUTHERN RAILWAY :
 6 COMPANY, :
 7 Plaintiff, : Case No. 1:08-CV-618

8 vs. :

9 CITY OF ALEXANDRIA, et :
 10 al., :
 11 Defendants. :

12 - - - - -x

13 CITY OF ALEXANDRIA, :
 14 Counterclaim Plaintiff, :
 15 vs. :

16 NORFOLK SOUTHERN RAILWAY : Case No. 1:08-CV-618

17 COMPANY, :

18 Counterclaim Defendant, :

19 and :

20 RSI LEASING, INC., :

21 Third-Party Defendant. :

22 - - - - -x

1 Highly confidential 30(b)(6) deposition of DAVID
2 T. LAWSON called for examination pursuant to notice
3 of deposition, on Thursday, October 16, 2008, in
4 Alexandria, Virginia, at the Offices of the
5 Alexandria City Attorney, City Hall, 301 King
6 Street, Suite 1300, at 9:17 a.m., before DONALD R.
7 THACKER, a Notary Public within and for the
8 Commonwealth of Virginia, when were present on
9 behalf of the respective parties:

10
11
12
13
14
15
16
17
18
19
20
21
22

W. ERIC PILSK, ESQ.
Kaplan, Kirsch & Rockwell LLP
1001 Connecticut Avenue, Northwest
Washington, DC 20036
202.955.5600 202.955.5616
Epilsk@kaplankirsch.com
On behalf of City of Alexandria

- continued -

[REDACTED]

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

NORFOLK SOUTHERN RAILWAY,	:	
Plaintiff,	:	
vs.	:	Case Number
CITY OF ALEXANDRIA, et al.,	:	1:08-CV-618
Defendants.	:	
-----x		
CITY OF ALEXANDRIA,	:	
Counterclaim Plaintiff,	:	
vs.	:	
NORFOLK SOUTHERN RAILWAY COMPANY,	:	Case Number
Counterclaim Defendant,	:	1:08-CV-618
and	:	
RSI LEASING, INC.,	:	
Third-Party Defendant.	:	
-----x		

CONFIDENTIAL 30(b)(6) DEPOSITION OF RSI LEASING,
INC., THROUGH KELLEY MINNEHAN

Alexandria, Virginia

Wednesday, September 17, 2008

REPORTED BY:

CARMEN SMITH

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

1 Deposition of KELLEY MINNEHAN, called for
2 examination pursuant to notice of deposition, on
3 Wednesday, September 17, 2008, in Alexandria,
4 Virginia, at the Alexandria City Hall, 301 King
5 Street, Suite 1300, at 9:30 a.m., before CARMEN
6 SMITH, a Notary Public within and for the District
7 of Columbia, when were present on behalf of the
8 respective parties:

9

10

W. ERIC PILSK, ESQ.

11

MEREDITH MILLER, ESQ.

12

Kaplan Kirsch & Rockwell LLP

13

1001 Connecticut Avenue NW

14

Washington, DC 20036

15

202-955-5600; FAX: 202-955-5616

16

epilsk@kaplankirsch.com

17

On behalf of City of Alexandria

18

19

20

21

22

-- continued --

1 is a lease agreement where we physically lease the
2 track and the land from the -- it's a G&W railroad,
3 Genesee and Wyoming.

4 The rest of our terminals are with the
5 Norfolk Southern, which are operated under either a
6 licensee agreement or a contract agreement.

7 Q Okay. And at the Buffalo facility, if --
8 well, let me ask it more generally.

9 Is the Buffalo facility operated in a way
10 different than the other six facilities?

11 A No. Most of -- yes and no, from the
12 standpoint that --

13 MR. BRYANT: For the record, this is not a
14 subject that he's been designated on or that is
15 listed, so we haven't even talked about this. I
16 haven't even seen the agreements with any other
17 facility other than Van Dorn yard. We'll give you
18 some leeway, but I don't know that he's speaking for
19 RSI on these subjects.

20 MR. PILSK: I appreciate that. And I
21 don't have a lot of questions. I'm just trying to
22 get a sense of the different --

1 MR. BRYANT: Sure, I understand.

2 THE WITNESS: The Buffalo facilities is a
3 true lease agreement which any company could go to,
4 or railroad and lease a piece of track and land and
5 do a transload, where the railroad is not involved
6 in your operation. Best way to answer that.

7 BY MR. PILSK:

8 Q Okay. And I think you said that within
9 the other six terminals, some were license and some
10 were contract?

11 A Correct.

12 Q Just very generally, what's your
13 understanding of the difference between the licensed
14 versus the contract?

15 A There's a large difference from the
16 standpoint as a licensee in the other facilities, we
17 have a lot more control in what we do, and most
18 importantly is how we handle customers. And the
19 customers there, we do all the pricing on all the
20 transfers, meaning that we established a price, the
21 terms of the agreements and what's going to take
22 place, hours of operation, holidays. We have a lot

1 of flexibility.

2 Q And that's in the licensing arrangements?

3 A Correct.

4 Q And in the contract?

5 A In the contract agreement, it's very
6 spelled out and specified what we can and can't do
7 and what we are required to do under the letter of
8 the contract.

9 Q Okay. And which of those types is the
10 Van Dorn yard?

11 A Contract.

12 Q Okay. And just to make sure we're clear,
13 when I'm referring to the Van Dorn yard, I'm
14 referring to the ethanol transload facility here at
15 the -- on Van Dorn Street?

16 A Right, yes.

17 Q Okay. Let me back up a little bit about
18 your -- what are, generally, your responsibilities
19 at RSI?

20 A I oversee all terminal operations and bulk
21 intermodal operations.

22 Q Who do you report to?

1 with them a lot with concerns with Alexandria
2 because of the fact that we're not the ultimate
3 decisionmaker. I'm not allowed at that facility to
4 make a lot of decisions in daily business. So we
5 are constantly, if not myself, Tony Rosenthal,
6 contacting them to get advice of how they want
7 things handled.

8 Q Can you give me an example?

9 A We wanted to clear some brush, so we
10 contact them and ask, you know, who do you want us
11 to contact to do that? Do you want that done within
12 the Norfolk Southern organization, or do you want to
13 go outside?

14 There's one perfect example because it
15 just happened this past week. And then they come
16 back and basically originally we've got -- moved
17 around to different departments that internally they
18 were going to do it, and then they realized that --
19 I don't know what happens internally in Norfolk
20 Southern, but it came back to us that we had to
21 contact local outside companies to obtain bids.

22 And then we in turn turned those bids over

1 to them to decide how they want to handle it.

2 Q Do you know who ultimately is going to pay
3 for that service?

4 A Norfolk Southern.

5 Q Generally, what is RSI's investment in the
6 physical facilities at the Van Dorn yard?

7 A Portable equipment, the pump systems, your
8 hoses, connections. You know, the clothing and
9 office equipment. And that's primarily it.

10 Q Okay. And are you aware of any
11 projections for future traffic levels at the Van
12 Dorn yard?

13 A Do I have any projections?

14 Q Yes.

15 A No, we do not market that facility, so
16 that's -- would come from the Norfolk Southern.

17 Q Okay.

18 MR. BRYANT: Before we go any further, I
19 didn't think about this, and I don't know that he's
20 going to have anything that might be confidential,
21 et cetera. But how do you want to handle -- to the
22 extent I know that we'll be talking about some of

1 is very difficult and requires a tremendous amount
2 of labor. And financially, it's tough to do, to be
3 profitable.

4 Q Okay. Had there -- did you have any
5 discussions with Norfolk Southern about this issue
6 prior to sending this draft?

7 A No.

8 Q Do you recall what Norfolk Southern said
9 in response to that comment?

10 A I know that it was that -- the hours of
11 operations were changed after we raised that item.

12 Q Did Norfolk Southern explain to you why
13 they were agreeable to that?

14 A No. They typically don't tell us too
15 much, in terms of what decisions they make.

16 Q Okay. And then looking at the last
17 comment on the page, "xvi," about the track
18 occupancy charges.

19 A Let me just read that for a second.

20 (Witness reviewed the document.)

21 Yes, we were just questioning if the
22 Norfolk Southern was going to be doing all the

1 billing and the customers truly were going to be
2 their customers, we were questioning why we would
3 continue to bill and collect TOC charges, which is
4 track occupancy charges. That's simply what it
5 states.

6 Q All right. Do you know what was the
7 ultimate resolution of that?

8 A Yes. In the final contract, we would be
9 acting as their billing agent, and we would be
10 keeping track of and billing track occupancy
11 charges.

12 And that particular item obviously refers
13 back to the tariff and what's stated in the tariff.
14 And most -- 99 percent of all things that we operate
15 under is in the contract with Norfolk Southern.
16 There is reference to the tariff and TOC, track
17 occupancy charges, is one of those items. And
18 believe it or not, the other one we have to go on is
19 holidays, because the contract does not have what
20 days we have off.

21 So the contract, the way I read it and my
22 manager reads it, is that what is not covered under

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

1 that's out there for everyone, including shippers
2 and other terminal operators, to look at for a guide
3 on pricing, which doesn't cover us because pricing
4 is controlled by the Norfolk Southern in the
5 contract.

6 But under our other facilities, obviously,
7 pricing is very important. And a tariff is kind of
8 the benchmark of the high number that we as an
9 operator can charge a customer for different
10 transfer services.

11 Q I guess what I'm -- and I don't
12 understand, but I'm asking how RSI does it. The
13 provision says to ensure shipper compliance with the
14 tariff.

15 A And that compliance specifies exactly what
16 we are to charge for track occupancy charges,
17 meaning that a customer has zero to 10 days free for
18 cars at the facility, and then anything above 11 to
19 40 days are to be charged, I believe it's \$40 per
20 day. And over that, 90, \$95 per day.

21 We are to keep track of those charges, and
22 that means we have to internally have to have a

1 system to track cars, when they are placed and when
2 they are released, and keep track of every
3 individual car.

4 And then under that tariff, we are to bill
5 the customer and collect that for the Norfolk
6 Southern.

7 Q Okay. And then mechanically, how does
8 that work? I think you described you --

9 A We have an internal database that we've
10 developed that we're able to go in, and when a car
11 arrives, we put it into our system, and it tracks
12 the car while it's in our possession and when it's
13 released. That helps to keep track of the days on
14 individual cars.

15 Q As a practical matter, have you -- you, I
16 mean RSI -- collected or charged any track occupancy
17 charges since it operated?

18 A Yes and no.

19 (Laughter.)

20 Q All right. I think you're going to have
21 to explain that.

22 MR. BRYANT: And I know exactly what he's

1 A It falls under our responsibility if
2 damage is incurred.

3 Q And then obviously, you would presumably
4 look to the trucking company?

5 A Correct.

6 Q The other piece of compensation that's
7 mentioned in the contract is just a rate per gallon
8 of ethanol that's transloaded; is that correct?

9 A Correct.

10 Q Do I have that right?

11 A Correct.

12 Q How was the volume measured?

13 A Through meters off the pumps.

14 Q Just -- are they measured on a per-truck
15 basis or on a daily basis?

16 A Per truck.

17 Q And then how is that billed to Norfolk
18 Southern? Is it weekly, daily, monthly?

19 A To the best of my knowledge, weekly.

20 Q In terms of daily dealings with Norfolk
21 Southern regarding the Van Dorn yard, who is your
22 primary point of contact?

EXHIBIT C

Bailey, Cathy

From: McMillan, Charlie B. [charlie.mcmillan@nscorp.com]
Sent: Friday, April 20, 2007 10:10 AM
To: Binck, Chris; Kelley Minnehan
Cc: Webb, Mike
Subject: RE: Bid Sheet Revision Draft
Importance: High
Attachments: image001.jpg; NS Alexandria TBT Bid Sheet Submittal 4 5 07.xls; Safety Shower.pdf

Subject: Alexandria, VA – Proposed Transloading of Ethanol

File: 244-12
 Project: D780
 April, 20, 2007

Chris:

The following are comments on the revised bid sheet for subject project:

- Add 25 tons to item 8 crushed stone for bedding where the concrete slabs are removed. This makes up the difference between to fill the 8" void with 3" of crushed stone and 5" of asphalt pavement.
- Have a separate bid item for the asphalt base course that goes in the track gage area.
- Have a separate bid item for the asphalt base course that goes in utility trenches which includes the patch for the area where the concrete slabs are removed.
- Have a separate bid item for the asphalt wearing course at least 2-1/2" deep that goes in the track gage area.
- Have a separate bid item for the asphalt wearing course that goes in utility trenches which includes the patch for the area where the concrete slabs are removed.
- Got two 37 pay items.
- Bond should be pay item 43.

We will need to furnish the Contractor electrical specifications and details on the safety eye wash stations.

If you have any questions please call me at 404-529-1252.

Charles McMillan

Kelly:

Attached is literature on the type of safety shower and eye wash station we are proposing for Alexandria. Please quickly review and advise if this safety shower/eyewash stations proposed for Alexandria will be acceptable.

If you have any questions please call me at 404-529-1252.

Charles McMillan

From: Binck, Chris [mailto:cbinck@BERGMANNPC.com]
Sent: Friday, April 20, 2007 1:27 AM
To: McMillan, Charlie B.
Cc: Sawyer, Katherine; Harrison, Roy
Subject: Bid Sheet Revision Draft

Charlie – good to see you today!!

8/25/2008

DST/2008

The quantities have NOT been revised on this version yet...take a look and see if we've captured the latest line of thinking that was discussed at the meeting today. Once you OK the list of items, we'll finalize the list and re-run the quantities.

You had not sent over the version of the Bid Sheet that you had revised and used at the meeting today...what I used as the basis for this version attached is the latest version we had published on 4/5/07. Can you send your version over to me...thanks

Chris Binck



1040 First Avenue, Suite 430
King of Prussia, PA 19406
ph: 610.783.1420 x-314
fx: 610.783.1425
cel: 215.806.8228
e: cbinck@bergmannpc.com
www.bergmannpc.com

Item	Description	Qty	Unit	Unit Price	Cost
Soil Erosion and Sedimentation Control					
001	Furnish, Install, & Maintain 36" Silt Fencing, Incl. Removal after Completion of Project	1,280	LF		\$ -
002	Furnish, Install & Maintain Filter Bags at Catch Basins	6	EA		\$ -
Civil/Site					
003	Remove Existing Crane Rail & Cross Ties, Incl. Pavement Sawcutting, Rail Removal, Tie Removal & Disposal	2,450	LF		\$ -
004	Remove Existing Asphalt Paving, Incl. disposal	1,900	SY		\$ -
005	Mill Existing Asphalt Paving (Average 2" depth) Incl. Disposal	3,900	SY		\$ -
006	Unclassified Excavation	560	CY		\$ -
007	Furnish & Install Subbase VADOT 21A (Pavement Subbase, Curb Subbase & Backfill)	550	TN		\$ -
008	Furnish & Install VADOT Open Graded Coarse Aggregate, VADOT Size No. 1 Stone Behind South Curbline	130	TN		\$ -
009	Furnish, Place & Compact 5.5" Hot Mix Asphalt Base Course (VADOT BM-25.0) Incl. Prime Coat	835	TN		\$ -
010	Furnish, Place & Compact 2" Hot Mix Asphalt Wearing Course (VADOT SM-12.5D) Incl. Tack Coat	680	TN		\$ -
011	Furnish & Install Reinforced Concrete Curb with 12" Reveal, Incl. Pavement Sawcutting, Excavation, Reinforcing, Formwork, Concrete, Finishing, Joints, Asphalt Sealant & 6" Sch 40 PVC Drains @ 100' spacings	2,560	LF		\$ -
012	Furnish & Install 6" dia. Cast Iron Drainage Gates, Incl. Grout Pad and Anchor Bolts	24	EA		\$ -
013	Furnish & Install 40' Container (Incl. Transportation, Setting & Leveling, Interior Insulation)	1	EA		\$ -
014	Furnish & Install Guard Posts (Bollards), Including Excavation, Concrete Foundation, Filling Posts with Concrete & Painting	48	EA		\$ -
015	Furnish & Install 8' High Chain Link Fencing, Incl Excavation, Posts & Concrete Foundations, Top Bars, Tension Wires, Fabric, Stretcher Bars, Rods & Turnbuckles, Bands, Caps and All Misc. Accessories	2,180	LF		\$ -
016	Furnish & Install 24' Manual Dual Swing Gates, 8-foot height, Includes Posts, Gates, Accessories	5	EA		\$ -
Utility					
017	Wet-Tap Connection to Existing 12" Utility Co. Main	1	EA		\$ -
018	Furnish & Install Water Meter Pit , Incl. Utility Coordination, Excavation, Bedding & Backfill, Concrete Pit & Locking Lid, 8" Gate Valve, Backflow Preventer, Flow Detector & Fittings, and All Misc. Accessories	1	EA		\$ -
018	Furnish & Install 8" Class 52 DIP Fire Service with Mechanical Joints, Including Pavement Sawcutting, Trenching, Bedding, Backfill, Warning Tape, Piping, Fittings, Joints, Concrete Anchors, and All Accessories (48" Cover)	2,160	LF		\$ -
019	Furnish & Install 12"x12"x8" DIP Tees With Concrete Anchors	1	EA		\$ -
020	Furnish & Install 2" Copper Water Service, Including Pavement Sawcutting, Trenching, Bedding, Backfill, Warning Tape, Piping & Fittings, Tie-in at Office Bldg., and All Misc. Accessories (48" cover)	1,920	LF		\$ -
021	Furnish & Install Fire Hydrant, Incl. 8" Gate Valve, Valve Box, Concrete Anchors, 8x8x8 DIP Tees and/or 8x8 DIP 90°s, Excavation, Bedding and Backfill	4	EA		\$ -

4/5/2007

R
E
V

Item	Description	Qty	Unit	Unit Price	Cost
022	Furnish & Install Eye Wash Stations, Complete with Posts, Station & Signs / Incl. 1/2" Copper Laterals, 1/2" Brass or Bronze 125# Gate Valves, with Sawcutting, Trenching, Bedding, Backfill, Warning Tape, and All Misc. Accessories.	8	EA		\$ -
023	Provide Foam Trailer ; "ANSUL Masterfoam Single Tote-Trailer" with 275 gallons of Ansulite 3x3 LV AR AFFF Foam, ANSUL Manual Monitor MM1000 Series, & ANSUL Self-Educting Masterfoam Nozzle (See Randy Young / East Coast Fire Protection / 1407 Mill Race Dr. / Salem, Va. 24153 / (540) 378-6160)	1	EA		\$ -
024	Provide Additional Ansulite 3x3 LV AR AFFF Foam in 55-Gal Drum Storage (Within 40' Container)	990	GAL		\$ -
025	Furnish & Install Knox Box Per Fire Department Requirements, Incl. Steel Post, Foundation & Vandal-Proof Attachments	1	EA		
Electrical					
026	Bond & Ground Existing Track, Incl. Track Bonds, Jumper Bonds, Ground Rods, Cable, Fittings and All Misc. Accessories	1,240	TF		\$ -
027	Grounding for Container, Incl. Ground Rods, Cable, Fittings and All Misc. Accessories	1	LS		\$ -
028	Furnish & Install Underground Sch. 40 PVC Conduit Bank - (2)-2", Incl. Pavement Sawcutting, Trenching, Bedding, Backfill, Fittings, Spacers & Conduit, Warning Tape, All Wiring, Circuit Breakers and Tie-In to Existing Panel Board in Office Bldg. (Power from Office Bldg into Container @ 24" cover)	410	LF		\$ -
029	Furnish & Install NEMA 5-20R Duplex Receptacles With Wiring and Accessoris Inside Container	2	EA		\$ -
030	Furnish & Install NEMA 5-20R GFCI Receptacle With Wiring and Accessoris Outside Container	1	EA		\$ -
031	Furnish & Install Wrap-Around 4' x 2/T8 Tube Fluorescent Light Fixtures, Incl 3/4" Galv. Conduit, All Wiring, JB's and Switch Inside Container	2	EA		\$ -
032	Furnish & Install 11.2 MBH, 3.3KW, 240 Volt Single Phase, Thermostatically Controlled Electric Unit Heater Model UHEC by Trane Co or equal, Incl 3/4" Galv. Conduit, All Wiring, JB's and Switch Inside Container	2	EA		\$ -
033	Furnish & Install Exhaust Fan Model 100C15DM by Loren Cook or equal. Fan Spec - 550 CFM at .375"wc, 0.125 hp Single Phase Motor. Provide 3/4" Galv. Conduit, All Wiring, Motor Starter, JB's, & Switch. Provide Factory Backdraft Damper and Ruskin 4" Aluminum Louver & Galvanized Steel Damper. Louver and Damper shall each have .125"max pressure drop at 550 CFM. Install louver/damper set low and opposite from fan.	1	EA		\$ -
034	Furnish and Install 48' Wood Pole (40' above ground); Including Guys, Ground Anchors, Cross Arms and Related Accessories at Loading Area	8	EA		\$ -
034	Furnish & Install Triplex Self Supporting Aerial Cable 3-#350KCML + 0.500" Extra-Strength Messenger w/Heavy Duty Support Messenger Clamps (480V power for pole mounted receptacles <u>at loading area</u> , Incl Wire Drops to Receptacles)	1,110	LF		\$ -
035	Furnish & Install 480V, 3Ø, 60A Circuit Lock Safety Lock Pole-Mounted Receptacles w/ Disconnect	8	EA		\$ -
036	Furnish & Install Pole-Mounted, Rigid Galvanized Steel Riser (above 480V receptacles)	48	LF		\$ -
037	Furnish & Install #4/0 BC Ground Cable w/ 10' Lg Copper Clad Ground Rod and All Accessories (Assume 40' cable per pole)	8	EA		\$ -

Norfolk Southern Proposed TBT Facility at Intermodal Facility
 Alexandria, VA

File: 244-12; Project: D780

4/5/2007

R
E
V

Item	Description	Qty	Unit	Unit Price	Cost
038	Furnish & Install Primary Site Electrical Service - 480V, 3Ø, 3-#350LCMIL + 0.500" Extra-Strenght Messenger w/HD Support Messenger Clamps, 48' (40-foot height) wood poles @ 175' Spacing w/ Guys, Ground Anchors, Cross Arms and Related Accessories, Tie in to VA Power Co. 75KVA-480V Transformer, Utility Coordination and New Meter. (New 480V Power Service)	1,000	LF		\$ -
SUBTOTAL					
0019	Performance & Payment Bond	1	LS		\$ -
TOTAL					

BID ALTERNATES:					
BA 0001	Provide Foam Trailer ; "ANSUL Masterfoam Double Tote-Trailer " with 550 gallons of Ansulite 3x3 LV AR AFFF Foam, ANSUL Manual Monitor MM1000 Series, & ANSUL Self-Educting Masterfoam Nozzle (See Randy Young / East Coast Fire Protection / 1407 Mill Race Dr. / Salem, Va. 24153 / (540) 378-6160)	1	EA		\$ -

NOTE: Offerer must sign and date this form in space provided and return with offer.

 Offerer Company Name

 Offerer Signature

 Offer Date

Keyword/Model #

Search

Products

NASCAR

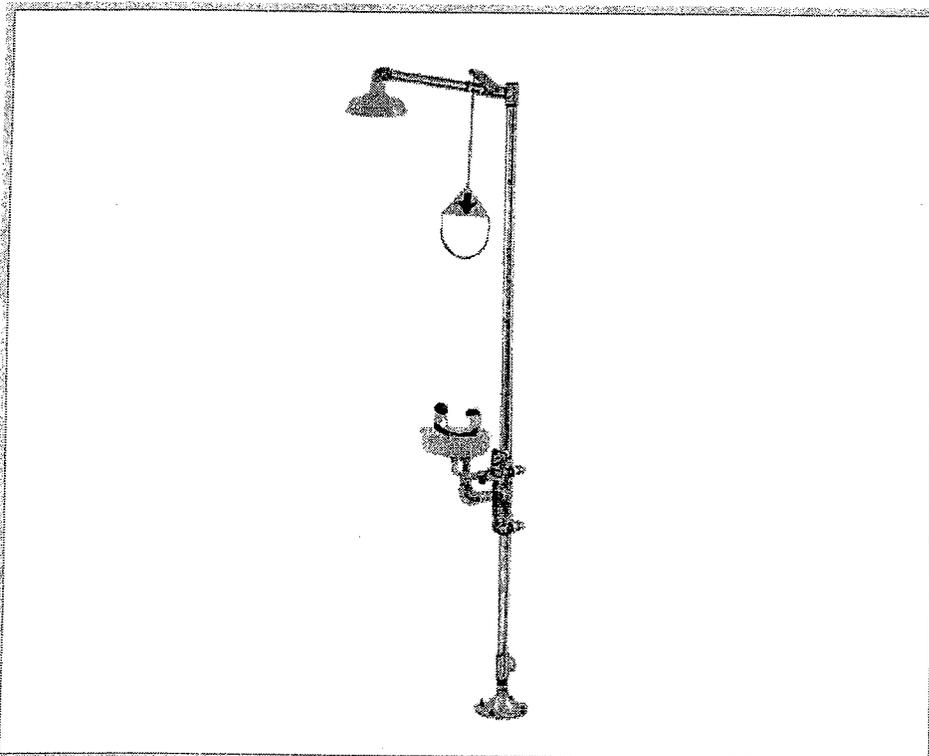
Services

Literature

Distributors

About Us

Automatic & Manual Freeze & Scald Protection



Description | Models | Gallery | Literature

Piping & Valve

- Schedule 80 hot dip galvanized steel piping.
- 1/2" CP bronze EW stay-open ball valve with CP ball.
- 1" CP bronze shower stay-open ball valve with CP ball, SS valve stem and SS pull rod assembly with actuation graphic.

Shower

- High visibility ABS plastic.
- Self-adjusting 30 gpm (113.6 lpm).*
- Delivers minimum of 20" (50.8 cm) diameter, dispersed pattern for target area of 60" (152.4 cm) above standing level.
- 20 gpm options available

Eyewash

- ABS plastic heads, wye and float off covers secured with SS bead chains.
- Self-adjusting regulator to flow at 3.2gpm (12.1 lpm).*

Freeze & Scald Valve Options

- Automatic Freeze Valve - Opens automatically when internal temperature reaches 32°F (2°C) and closes at 40°F (4.5°C).
- Automatic Scald Valve - Opens automatically when internal temperature reaches 95°F (35°C) and closes at 105°F (40.6°C).
- Manual Protection Valve - Activated manually to pass water through unit.

Drench Hose Option

- Provides partial body flushing.
- 6' (182.9 cm) synthetic rubber hose assembly and mounting bracket.
- Yellow ABS plastic single-stream head and float off cover secured by SS bead chain.

Supply

- 1-1/4" NPT connection.

Waste

- 1-1/4" NPT connection.

Ship Weight

- Automatic - 60 lbs (27.22 kg)
- Manual - 58 lbs (16.30 kg)

* Varying hydraulic conditions of 30 to 70 psi (206.8 to 482.6 kPa)

EXHIBIT D

Bailey, Cathy

From: Kelley Minnehan [Kelley@rsilogistics.com]
Sent: Friday, November 09, 2007 11:27 AM
To: Webb, Mike; Charlie.mcmillian@nscopr.com
Subject: Alexandria
Attachments: Baltimore TBT 08_06-17-Edit.jpg; Baltimore TBT 08_06-Edit-2.jpg

Mike and Charlie:

I was just at Alexandria yesterday meeting with the Fire Marshall and looking over the work the contractor was doing on the water line and saw that they had also dug out the footer for the retention wall. I have a big concern that it is to close to the rail and will not give enough room to have a cart and truck loading and then room left over for other trucks to pass by. I walked off the distance from the outside of the tie to the retention wall at 30 ft. at Alexandria. Take a loll at the enclosed pictures to see we will need more room. I can shorten our hose on both sides of the pump but still feel this will be tight for trucks to pass by.

I thought we where going to have 40 ft. Please call when you get this.

Thanks

Kelley

EXHIBIT E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

NORFOLK SOUTHERN RAILWAY,	:	
Plaintiff,	:	
vs.	:	Case Number
CITY OF ALEXANDRIA, et al.,	:	1:08-CV-618
Defendants.	:	
CITY OF ALEXANDRIA,	:	
Counterclaim Plaintiff,	:	
vs.	:	
NORFOLK SOUTHERN RAILWAY COMPANY,	:	Case Number
Counterclaim Defendant,	:	1:08-CV-618
and	:	
RSI LEASING, INC.,	:	
Third-Party Defendant.	:	

30 (b) (6) DEPOSITION OF RSI LEASING, INC., THROUGH
ANTHONY ROSENTHAL

Alexandria, Virginia
Wednesday, September 17, 2008

REPORTED BY:
CARMEN SMITH

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Deposition of ANTHONY ROSENTHAL, called for examination pursuant to notice of deposition, on Wednesday, September 17, 2008, in Alexandria, Virginia, at the Alexandria City Hall, 301 King Street, Suite 1300, at 11:18 a.m., before CARMEN SMITH, a Notary Public within and for the District of Columbia, when were present on behalf of the respective parties:

W. ERIC PILSK, ESQ.
MEREDITH MILLER, ESQ.
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue NW
Washington, DC 20036
202-955-5600; FAX: 202-955-5616
epilsk@kaplankirsch.com
On behalf of City of Alexandria

-- continued --

1 transload track.

2 Q Okay. Do you have any understanding of
3 what the storage track is used for?

4 A Storage of the railcars.

5 Q Is it used for the storage of the railcars
6 that you transload from?

7 A Sometimes.

8 Q Okay. And also used by other railcars?

9 A I've seen other railcars on it.

10 Q Okay. And does -- when I say "you," I
11 mean RSI generally. Does RSI do anything on or
12 around with cars that are on the storage track?

13 A No.

14 Q Okay. So am I correct that the
15 transloading operation is concentrated on the
16 transload track?

17 A Correct.

18 Q All right. We'll come back to that. And
19 generally, what are your -- the hours of operation?

20 A My employees get there at 6:30, 6:00 or
21 6:30. And we open the gates at 7:00, and we close
22 the gates at 6:00.

1 Q And that's Monday through Friday?

2 A Yes.

3 Q Are there any weekend hours?

4 A No.

5 Q On the transload track, do you know the
6 number of tank cars that can be accommodated?

7 A It can hold 20.

8 Q Okay. And then how many pumping, I don't
9 know if the right expression is units or stations,
10 does RSI have on site?

11 A Three.

12 Q All right. And what's the proper term?

13 A Carts.

14 Q Carts.

15 A Pumping carts.

16 Q About how big are they?

17 A About 4 feet wide by 6 feet long. They
18 look just like the ones at the airport. It's very
19 similar to the ones at the airport if you look out
20 your window from the plane.

21 Q That they pump the fuel in?

22 A Yes.

1 Q And do you know how long the -- well,
2 strike that.

3 And then why don't we stay for a minute
4 looking at the map. Can you describe where -- from
5 which direction do the railcars come in?

6 A They come in from the east side.

7 Q Okay. And looking at the map, is that the
8 left or right?

9 A To your right.

10 Q Okay. They come in to the right. And
11 then I gather the trucks come in to be filled up
12 with the ethanol; is that correct?

13 A Not from the same direction.

14 Q No, that was my next question, but I just
15 want to -- this gets a bit tedious, this process.

16 A Okay.

17 Q Because I want to have you tell me the
18 facts, but I know a little bit. The railcars come
19 in from the right as we look at the map. And the
20 basic operation is you pump the ethanol from the
21 tank cars into trucks; is that correct?

22 A That's correct.

1 Q Then from which direction do the trucks
2 come in?

3 A They would come in from the left, as you
4 look at the drawing.

5 Q Okay. Is there an area -- well, is there
6 any staging of trucks before they're pumped?

7 A The staging would be to the left, outside
8 of the gate to the facility.

9 Q Okay. At any given time, about how many
10 trucks are outside of the gate, would you say?

11 A There is no set number.

12 Q Can you give me --

13 A It's whenever they arrive and how many
14 pumps we have operating at the time. So -- but it's
15 never a constant two, three out there. It's just --
16 it varies.

17 Q Okay. And generally speaking, can you
18 give me a sense of what the typical range is, in a
19 day, of how many trucks may be waiting out?

20 A I would say no more than two on average.

21 Q Okay. And how many pumps are typically
22 operating at any given time?

1 MR. BRYANT: I don't want to mislead you
2 here. When you say "no more than two on average," I
3 mean, I was out there yesterday and there were
4 three. So I don't want -- when you say "no more
5 than two on average," that's a confusing answer.
6 Why don't you just tell him what's the most you've
7 had, the least you've had and then the average. How
8 about that?

9 MR. PILSK: That's fine.

10 THE WITNESS: One, the most I've had is
11 five, I believe.

12 BY MR. PILSK:

13 Q Okay. And then generally, what would you
14 say the average is?

15 A Two.

16 Q That's fine. Thank you. And when a
17 string of tank cars -- when I refer to tank cars,
18 I'm referring to the train cars. Is that -- do you
19 agree with that?

20 A Yes.

21 Q Okay. When there's a string of tank cars,
22 how many pumps do you have going at any given time

1 typically?

2 A Typically two.

3 Q Okay. I'm just interested, what are the
4 circumstances in which you may have only one going?

5 A Volume of trucks and personnel, if we're
6 short of people.

7 Q How many RSI people are involved in any
8 given pumping or transload?

9 A Two at each pump.

10 Q Okay. And then when you say there's seven
11 employees, plus yourself; is that right?

12 A Yes.

13 Q Okay. If only one pump is going, what are
14 the other six guys -- excuse me, five guys doing?

15 A Any variety of maintenance chores. If
16 it's going to be a busy day, they may be just
17 sitting in the office taking their breaks or
18 lunches.

19 Q Okay. And what's your typical rotation,
20 if you've got -- on a relatively busy day, does it
21 work where two guys go out and pump and then they
22 take a break, another two guys go out, or is there

1 any particular system?

2 A Excuse me one minute. I wear a hearing
3 aid and the battery is going dead. It's -- I can
4 hear you, though.

5 If we're running three pumps, we have two
6 people assigned to the pumps, they would rotate
7 turns.

8 If whoever comes off first would go --
9 well, if we have pumps 1, 2 and 3, if pump 3 is
10 finished, they will come in and take a break. If
11 another truck comes and there's nobody else
12 available, they will go back out to pump 3.

13 Q Okay.

14 A But they generally rotate around.

15 Q All right.

16 A But if we've got people waiting, then they
17 stay out there.

18 Q All right. And about how long does it
19 take to fill up a truck?

20 A Normally, between 20 and 25 minutes, if
21 we're taking the ethanol out of one tanker. If we
22 have to call a split load, if we have to take -- you

1 have to go to another tanker to finish the truck,
2 then it may take an extra 10, 15 minutes.

3 Q Okay. And is that the typical practice,
4 to fill up a truck even if you have to go to two
5 tank cars?

6 A Each tanker will fill 3-1/2 trucks. So
7 after that -- if you're the half truck, then you
8 have to go to the next tanker to finish the complete
9 load.

10 Q Okay. And my question is in that
11 circumstance, if there was another -- there's more
12 ethanol in another tanker, will you always fill up
13 the truck before it's sent out?

14 A Yes, yes.

15 Q All right. And then after the trucks are
16 fill -- or full, excuse me, how do they exit the
17 facility?

18 A They exit to the east, or to the right,
19 looking at the map. There's an exit ramp.

20 MR. BRYANT: Okay. You mean they leave?

21 THE WITNESS: You're talking about --
22 excuse me.

1 material on security; it was just a PowerPoint. Do
2 I understand that correctly?

3 A I have received memos from Norfolk
4 Southern on training issues that were to be
5 related -- or to be relayed to the employees.

6 Q But the training itself, there wasn't a
7 written document handed to the employees; it was
8 PowerPoint?

9 A It was PowerPoint and a test.

10 Q All right. Now I want to go back to the
11 more nitty-gritty details of the transloading and
12 follow up.

13 What I'm trying to do here is understand
14 the sequence of events. So when do you first learn
15 that a string of tanker cars are coming in?

16 A Normally, I hear -- or learn of the tanker
17 cars from the NS's customers' suppliers.

18 Q Can you give me an example of the names of
19 one of those entities?

20 A VeraSun.

21 Q And how does VeraSun let you know?

22 A They will e-mail me a complete list of the

1 railcars, including bill of ladings and certificate
2 of analysis.

3 (Deposition Exhibit 9 identified.)

4 BY MR. PILSK:

5 Q Hand you what we've marked as RSI-9. And
6 this is a -- it's marked RSI12/00111 through 00131.
7 And it's a collection of what look like e-mails.
8 And at the top of the page, they all say -- the
9 first page of each e-mail, it says "Arrival
10 Notification." I don't know if this is who printed
11 them out, Cathy Bailey?

12 MR. BRYANT: It is. She's my secretary.

13 BY MR. PILSK:

14 Q The e-mails are from, in this case, TYES
15 prod user, and they are addressed to you. They are
16 various dates, mostly it looks like July and August
17 of this year. Do you recognize these documents?

18 A Yes.

19 Q Why don't you tell me what they are.

20 A They are arrival notifications from
21 Norfolk Southern, letting me know that the railcars
22 are in town.

1 track, Norfolk Southern just does that?

2 A I know -- I turn in a switch list at
3 night, the night when we finish work, letting them
4 know which railcars are empty and which railcars I
5 need placed in what positions, if there -- if I want
6 them placed in a certain position.

7 So I know that evening, they will be
8 switched.

9 Q Okay. And when you're -- all right. Let
10 me keep this simple for me. Clean slate, there's no
11 cars on the unloading track, no railcars on the
12 unloading track. All right.

13 Overnight Norfolk Southern brings in a
14 string of cars, of tank cars. They're put in, and
15 that day you unload all of them?

16 A No.

17 Q No, okay.

18 A We only unload as many as it takes to fill
19 the orders for that day.

20 Q I see. Okay. All right. So in that
21 case, let's say that, just to make up numbers, that
22 there were 10 cars, 10 tank cars brought in, and you

1 unloaded five of them. And then on your switch
2 list, what would you put down?

3 A The -- I would list the railcar numbers
4 for the five empty ones, and there's a spot you can
5 put an E next to it. And I fax that to Central Yard
6 Operations.

7 (Deposition Exhibit 10 identified.)

8 BY MR. PILSK:

9 Q I hand you what's been marked as RSI 10,
10 and these are Bates numbered NS12/00956 through
11 01045. You anticipated my first question, but can
12 you identify this collection of documents for me?

13 A Yes, these are the switch list I provide
14 to the CYO, Central Yard Operations.

15 Q Okay. It looks, as I look through these
16 documents, that the handwriting looks pretty much
17 the same throughout. Is this your handwriting?

18 A Not all of it, no. I have someone else
19 that does it as well.

20 Q Do you fill these out on occasion?

21 A Majority of the times.

22 Q Is there -- can any -- do any of your

1 employees do this, or is there someone else who is
2 specifically tasked with doing it?

3 A One other employee is tasked with it if
4 I'm not there.

5 Q Okay. All right. Can you just -- why
6 don't we take the first page as just an example.
7 But can you walk me through, you know, what does
8 "pulled" mean?

9 A Sure. The top portion, where railcar is
10 to be pulled, they are the ones that are empty, that
11 we emptied during that day. So I list the car
12 initial, the car number and put down E or empty.
13 This gets faxed into the Central Yard Operations,
14 and they then give instructions to the railroad, the
15 switch crews.

16 Q Okay. So if I understand from your prior
17 example, if you pulled in five cars or a string of
18 10 tankers and you've unloaded five of them in a
19 given day, you would fill out one of these -- what
20 do we call this form?

21 A Over the years I've just always referred
22 to them as switch lists.

1 didn't ask to be placed there?

2 A I didn't ask but it doesn't matter.
3 They're all the same customer.

4 Q Right, okay. Is there a log that RSI
5 keeps of every car, every tanker car that comes onto
6 the unloading track?

7 A A file folder.

8 Q And I don't believe that we've seen that,
9 and I don't know that we need to. But what is that?

10 MR. BRYANT: I'm not sure I have either.

11 BY MR. PILSK:

12 Q Describe to me what that is.

13 A The file folder simply contains bill of
14 lading, certificate of analysis and the railcar
15 number. And after each railcar is unloaded, all the
16 bill of ladings for that particular railcar are
17 stapled together and put in the file.

18 Q Okay. Is there any notation or log or
19 other kind of record that RSI keeps to say that on
20 this day, we got in car NATX, you know, 303250 and
21 we emptied it and that's it?

22 A We have a daily inventory sheet that lists

1 makes any contact with the customers to let them
2 know that ethanol is about to be delivered and ready
3 to be picked up?

4 A I don't know.

5 Q Okay. You don't know either way?

6 A That's correct.

7 Q Okay. They may be doing it; they may not.
8 You don't know?

9 A I don't know.

10 Q Okay. And then how do you know -- you
11 said earlier that on the switching sheets, you will
12 indicate when you need to that you need cars for a
13 specific customer placed. How do you know that you
14 need those particular cars placed?

15 A I am notified by either the customer
16 and/or a truck line that -- I know how many trucks
17 are coming that particular day, so I know how many
18 railcars I will need to meet that volume.

19 Q Okay. And let's talk about that half of
20 the equation, then, for a moment. When --

21 MR. BRYANT: And he is a designee on what
22 they know about those subjects, getting it to and

1 from. I don't think they know much about getting it
2 to the facility, but getting it from, they do have
3 some knowledge.

4 BY MR. PILSK:

5 Q Okay. So when do you first -- compared to
6 when you actually do the transload for a given
7 customer, when is the first thing that you hear from
8 that customer or the trucking company that they are
9 on their way?

10 A Who is on their way? The trucks or the
11 railcars?

12 Q Trucks.

13 A I know the day before one truck line is
14 going to do 11 loads, another 12, another 2 --

15 Q How do you know that?

16 A Either the customer or the truck line
17 sends me order numbers for that particular day.

18 Q And what are the -- well, we may or may
19 not have had them, I don't know. But what do those
20 order numbers look like, order sheets?

21 A They are usually like the pro number,
22 trucking line pro number, I don't know if you have

1 seen that. Some of them are just an order number
2 they create.

3 Q Are these e-mails or faxes?

4 A Both.

5 Q I mean, generally, what is on these
6 sheets?

7 A It's a list of numbers that I keep on a
8 log so that when a driver comes in, he will sign in,
9 write down his order number he is there to pick up.
10 And I have a master list of all the order numbers
11 that I cross-check.

12 Q Okay. You've got the master list from
13 what they have sent you the day before.

14 A The trucking lines send me the actual
15 numbers.

16 Q Right.

17 A The customer will tell me in advance that
18 Dana truck line is going to do 11, fleet 12, or
19 whatever the numbers are. They will let me know if
20 there is an increase or decrease in volume.

21 Q All right. And I'm sure I'm just getting
22 this confused. But when is the first time that you

1 receive a given order number, or from whom do you
2 receive the order numbers first?

3 A I receive the order numbers from the truck
4 lines. And it could be a day ahead or anywhere --
5 one line gives me three days notice, three days
6 worth of numbers, and another one gives me a whole
7 week's worth of numbers.

8 Q I see. So you'll get those any number of
9 days in advance?

10 A Yes.

11 Q All right. And then, if I understand it
12 right, the day before they tell you specifically
13 that X number of cars are coming?

14 A Trucks.

15 Q Trucks, excuse me. Trucks.

16 A They don't have to tell me because I know
17 because I have the order numbers. I'm given 12
18 order numbers.

19 Q What does an order represent, one truck?

20 A One truck.

21 Q Okay. So for each truck, there is an
22 order number.

1 A Yes.

2 Q So you know that -- to expect that. Now,
3 when you get those in advance, are they telling you
4 what day they're going to arrive?

5 A Each day, I would get, say, a new set of
6 12 numbers. Now, if they don't fill all the orders
7 from the prior day, they will pick -- that will just
8 roll over to the next day.

9 Q Okay. Okay. So they're not promising
10 that they will be there with a given number of
11 cars -- trucks, excuse me, on any given day?

12 A The customer -- correct. The customer
13 wants them to do -- has given them orders for 12
14 loads for that day. Whether they get it done or not
15 that day, that's up to them.

16 Q Okay.

17 A But I'm given 12 numbers.

18 Q Okay. And maybe 12 show up and maybe not,
19 but you just take them as they come?

20 A Correct.

21 Q Okay. And I guess the only thing I'm
22 still confused about is do you get one notice that

1 may be a week or so in advance and then a second
2 notice closer to the time they're actually going --
3 the trucks are actually going to arrive? Or is it
4 just --

5 A No, there are not two notices. Different
6 truck lines -- they have just different ways of
7 doing it. One will e-mail me the day before the
8 numbers for the next day. One has a habit of
9 sending me the whole week's at a time.

10 Q I see. And on the ones that they send you
11 for the whole week at a time, do they break it down
12 by how many you should expect on each day, or is it
13 just over the next week, we're going to send
14 whatever the number is, 30 trucks?

15 A It's daily.

16 Q Okay. So a week in advance, from them you
17 will get a daily list of what to expect over the
18 next week. Other companies you will get a list the
19 day before of what to expect the next day?

20 A Correct.

21 Q Okay. And on all of these, it's the
22 same -- am I correct it's the same basic

1 information, with the order number?

2 A Yes.

3 Q And any other information on it?

4 A No.

5 Q So you just get a list of order numbers
6 and you know that each order represents one truck
7 for that customer?

8 A Yes.

9 Q Okay. And is there -- other than
10 receiving those orders, do you have any dealings
11 with the customers?

12 A No.

13 Q All right. By "you," I mean you and
14 anyone else at RSI.

15 A No.

16 Q Okay. And let me back up, make sure I
17 understand. Do the order numbers list, does that
18 come from the customer or trucking company?

19 A Trucking company.

20 Q And do you receive anything from the
21 customer?

22 A I -- some customers would tell me we're

1 upping our volume or lowering our volume.

2 Q Just by an e-mail or a phone call?

3 A Yes. Some don't. I would get eight order
4 numbers for the next day instead of the usual 10.
5 That's how I find out sometimes.

6 Q All right. Okay. And do you know, is
7 there a particular pattern to which customers give
8 you that heads up and which don't?

9 A No. There are so few customers, there's
10 no pattern.

11 Q And do you know -- if you know. But do
12 you know why sometimes you get a heads up that the
13 order level is going to be increasing and other
14 times you don't?

15 A Generally, it's when he thinks about
16 keeping me clued in.

17 Q Okay. And are those the only dealings
18 that you have with the customers?

19 A I will send -- I send them a
20 transfers-done report on a daily basis and/or an
21 inventory report.

22 Q Okay. Now, is that something different

1 than what we've -- than the inventory log that we
2 talked about with respect to the cars, the tank
3 cars?

4 A Yes.

5 Q All right. Why don't you describe to me
6 what that is.

7 A In our database, once I receive notice of
8 a railcar inbound to us, it is put in our database
9 as being inbound. And then when it's constructively
10 placed, it's put in our data sheet as at terminal.

11 Q Okay.

12 A So an inventory sheet for the customer
13 will show all the railcars at terminal and then all
14 the railcars inbound. And occasionally, they
15 request that. One wants it every day, the other one
16 just periodically.

17 Q And then do you make additional entries on
18 the database as and after you transload?

19 A Yes. We enter it as released.

20 Q Okay. Okay. So you really do -- I mean,
21 we talked about this earlier, but you do keep sort
22 of a car-by-car record of what happens to each car?

1 A In that case, yes. That's not -- when I
2 was thinking of logs, I was thinking of --

3 Q That's fine. Okay. And this is all --
4 when you say "database," this is all on the
5 computer?

6 A Yes.

7 Q Is it an Excel spreadsheet or is it --

8 A It's Access.

9 Q Okay. And after you've entered in the
10 empty, is there any other information you put into
11 the Access database relating to any particular tank
12 car?

13 A Each -- every time a transload is made,
14 each BOL, bill of lading, is entered into the
15 computer.

16 Q Just the number?

17 A The number and how many gallons. And that
18 all is reflected in the database.

19 Q All right. And then do you also -- do you
20 put in the order number?

21 A No.

22 Q Okay. Just so I understand, so the order

1 numbers that you receive from the customers aren't
2 correlated to a particular tank car that filled that
3 order?

4 A No. The order numbers are security
5 issues.

6 Q What do you mean?

7 A So that I know that that person picking up
8 that load is there on legitimate business.

9 Q Oh, okay. Okay. All right. And then how
10 does a customer know that his order has been filled?

11 A I will send Motiva, I send a
12 transfers-done report at the end of the day. It
13 lists every transfer done. Transmontaigne requests
14 it by fax.

15 Q And is that information all pulled out of
16 the Access database?

17 A The Motiva is pulled out of the database.
18 Transmontaigne, they want copies of the bill of
19 ladings faxed to them. And I will send
20 Transmontaigne a daily inventory on the database.

21 MR. PILSK: Why don't we stop now. I've
22 got myself good and mixed up.

1 has actually got to get the money for that ethanol.

2 Q And the bottom line is that you match
3 up -- you make sure that a truck for a given
4 customer is filled with ethanol from a tank car that
5 was being consigned to that -- sent to that
6 customer?

7 A Yes.

8 Q Okay. I want to just try and finish up
9 with the arrangements whereby the trucks come to the
10 yard to pick up the ethanol.

11 So you get the sheet, whether it's the day
12 before or a few days before, with the order numbers
13 so you know how many trucks for each customer to
14 expect on a given day?

15 A Yes.

16 Q Is there any other coordination with
17 either the trucking company or the customer about
18 the trucks, or do they just -- you know, the 10
19 trucks or whatever it is show up that day and then
20 you --

21 A Yeah, I wouldn't even communicate with the
22 trucking companies until later in the afternoon,

1 when I'll call dispatch to make sure we're still on
2 target with the orders.

3 Q Okay. And you explained earlier that at
4 any given time, there's, you know, some range
5 between 1 and 5 and typically two trucks waiting
6 outside to come in to be filled. Do you talk to the
7 trucking companies or to the dispatchers at all to
8 work out the spacing or the timing of the trucks, or
9 do they just send them out on whatever schedule they
10 want to?

11 A It -- I know I say a lot "it depends," but
12 it does depend. Motiva -- let me start with the
13 more organized one, Transmontaigne. We have
14 arrangements for them, their trucking company, to
15 come in first thing in the morning. They either --
16 right now their schedule for the day was four
17 trucks. So we want them to be there at 7:00 so we
18 can load all four of their trucks to free that pump
19 up to move it to Motiva, because Motiva is the
20 majority of our business.

21 Q Let me just back up. How did you make
22 that arrangement?

1 A I called the -- Quest. And Transmontaigne
2 wanted to know if I had any preferences and for me
3 to work it out with Quest.

4 Q Is there any kind of contract between RSI
5 and any of the trucking companies?

6 A No.

7 Q Okay. Any contract between RSI and any of
8 the customers?

9 A No.

10 Q Okay. So these arrangements that you're
11 talking about are informal between you or one of
12 your staff and the trucking companies?

13 A Yes, they are all informal, yes.

14 Q Okay. So I kind of interrupted you.

15 A No.

16 Q So the arrangement is Transmontaigne
17 trucks come in first. They get filled?

18 A They will use one pump. We dedicate a
19 pump in the morning to Transmontaigne.

20 Q Okay.

21 A The other two pumps we will hook up to the
22 Motiva cars. And the trucking companies, they kind

1 of regulate themselves on how they arrive. At the
2 Motiva terminal in Springfield and Motiva terminal
3 in Fairfax, they only have one unloading station, so
4 you can only unload one truck at a time. So they
5 don't want to have three or four trucks coming in to
6 me or to the Norfolk Southern facility to get loaded
7 with ethanol, then they all stand in line at the
8 terminal.

9 So what they will do -- and this is the
10 same for Dana, who goes to Springfield. They only
11 have one unloading station.

12 A lot of the drivers would be assigned two
13 to three trips a day so they're not in each other's
14 way. They will come -- one driver will come pick up
15 the load and he won't be back for another hour and a
16 half. So they space themselves out that way.

17 Q And do you deal at all with the trucking
18 companies or the individual drivers with the routes
19 they are going to take or anything they do once they
20 leave the yard?

21 A No, that's their decisions.

22 Q Okay. Okay. With respect to the actual

1 transloading, we've talked a little bit, there's
2 three pumps. How often during the -- roughly,
3 typically, in the course of a given day, are all
4 three pumps operating?

5 A Maybe -- there may be a two-hour stretch
6 or so during the day, we will have all three pumps
7 going. It's generally midmorning when one pump is
8 still dedicated to Transmontaigne and the other two
9 dedicated to Motiva.

10 Q Okay. And so is the utilization of the
11 pumps sort of driven by both the availability of
12 tank cars but really the availability of trucks to
13 be filled?

14 A Availability of trucks and personnel.

15 Q Okay. So when you got the Transmontaigne
16 pumps going because you've got their trucks and
17 their cars, and then as the Motiva trucks begin to
18 arrive, you staff up the other pumps as needed to
19 fill them up?

20 A Yes, but there maybe one or two drivers
21 there at 7:00 from Motiva.

22 Q Okay. And right at that first -- so

1 A Yes.

2 Q So during that -- between sometime around
3 the 17th when it was actually put onto the track and
4 then until the 21st, when you asked to be pulled, it
5 was on the unloading track.

6 A Yes.

7 Q Do you typically ask cars to be pulled the
8 day that they are emptied?

9 A All the time.

10 Q So the day they are emptied, you ask them
11 to be pulled off?

12 A Yes.

13 Q Okay. And then Norfolk Southern
14 replenishes the --

15 A That's correct.

16 Q I'm just curious, is there a sequence? Do
17 you always try to unload from the -- I need to get
18 my directions right. If I'm looking at the map,
19 from the right-hand side of the sheet, so they can
20 be pulled off?

21 A No. The -- in order to make the flow of
22 the trucks smooth, we space the pumps out. I like

1 to have, if possible, a minimum of two full car
2 lengths between the pumps, but I prefer five, so
3 there's plenty of room to come and go.

4 So generally, what we do is --
5 Transmontaigne, we put all their cars, I try to have
6 them put all on the south -- this gets confusing.

7 Railroads speak in terms of tracks being
8 north/south all the time, regardless of what
9 direction they're in. I don't mean to make it more
10 complicated.

11 Q Like stern and port, okay. Starboard and
12 port.

13 A I try to have all the Transmontaigne put
14 on the south end, which in this case is on the left
15 side.

16 Q Okay.

17 A That way -- it's just everybody -- the
18 truck lines know where they have got to go so --

19 Q Okay. Do me a favor. If you could pull
20 out that, I forgot what we marked it as, the map?

21 MR. BRYANT: 6.

22 BY MR. PILSK:

1 Q Yes, Exhibit 6. And if you could grab
2 that red pen again -- it was number 0005. And if
3 you could just put an S and N where they ought to
4 go, put it off to the side of the track.

5 A Oh, like south and north, okay. I call
6 that south and that's north (indicating).

7 Q Okay. Great.

8 A We try to load Transmontaigne on the left
9 side. Those railcars for Transmontaigne. And all
10 the other railcars. When BioUrja is there with
11 Transmontaigne, we go Transmontaigne, then BioUrja,
12 and all the rest on the north end are Motiva.

13 Q How do you tell Norfolk Southern that
14 sequence?

15 A The little sheet I keep, my inventory
16 sheet, I will make a notation on that saying place
17 railcar number so-and-so, and I'll draw an arrow to
18 where I wanted it placed on that sheet. They're
19 numbered 1 through 20, or 1 through 18 is what we
20 usually have there.

21 I just draw an arrow saying this railcar
22 there. And that railcar should be on the pull

1 sheet.

2 Q How do you get that information to Norfolk
3 Southern?

4 A I hand deliver my inventory sheet to the
5 track crews on my way home.

6 Q Okay.

7 A I drop it off at the railroad office. If
8 they're there, I give it to them. If not, I just
9 leave it on the desk.

10 Q So you fax the switch sheet and you drop
11 off the inventory list and your direction on where
12 exactly you want the cars placed?

13 A Yes.

14 Q Okay. Okay.

15 A And it's just for my convenience sake.
16 There's nothing critical to it. It's just
17 organizational standpoint, that's the way we prefer
18 it.

19 So we try to spread the pumps out. One
20 pump, if we're doing Transmontaigne, one on the left
21 side, one maybe somewhere in the middle and one at
22 the end.

1 But we also try to do first in, first out
2 if we can. So we try to look -- there may be some
3 occasions where, you know, instead of the very far
4 end -- if they're on the far end, we do the
5 transloading from right to left, we move the pump to
6 the left.

7 But there may be some times we maybe start
8 two or three cars from the end because that was
9 there first and we've got to get it out of there.

10 Q So on any given day, if I understand it
11 right, you might have a mix of empty car, full car,
12 empty car, full car, as you move down the line; is
13 that right?

14 A At the end -- yes, during the day. At the
15 beginning, it's all -- they're all full.

16 Q Right. And so then you fax in your switch
17 sheet, you drop off your inventory and placement
18 lists, and you go home. And then that night, I --
19 am I correct that Norfolk Southern comes and pulls
20 the whole string out, takes off the empty cars and
21 reshuffles them with full cars?

22 A If they have to. The fewer cuts, the

1 better. A lot of times, if they don't have to pull
2 the last 10 cars, they won't.

3 Q I see. They will -- okay.

4 A They will cut them, pull what they need.

5 MR. BRYANT: That's a time-consuming
6 process.

7 THE WITNESS: It takes a long time to
8 switch railroad tracks.

9 BY MR. PILSK:

10 Q I can imagine. Okay.

11 (Deposition Exhibit 13 identified.)

12 BY MR. PILSK:

13 Q Hand you what we've marked as Exhibit
14 RSI-13, Bates number RSI6/00001. And I'll represent
15 to you this was produced in a much larger stack of
16 driver sign-in sheets, and I only pulled the top one
17 off as an example.

18 But do you recognize this document?

19 A Yes.

20 Q And can you identify it or describe it?

21 A It's the driver sign-in sheet. When the
22 driver pulls into the terminal, they will come into

1 Does that --

2 A That's --

3 Q -- make sense?

4 A Yes.

5 Q Is that consistent with your recollection?

6 A Yeah. I honestly don't have recollect of
7 the date, but that would make sense. Do you want
8 that back?

9 Q Why don't you just keep it with that.
10 I'll just do that.

11 And then where -- when do the drivers sign
12 this sheet?

13 A When -- they at least have to sign it
14 before they go out, or they're asked to sign it
15 before they go out. Some will sign it when they
16 first get there. They could be the second in line
17 and they would go ahead and sign in.

18 Q Okay. And when -- would that be when they
19 come through the gate or while they are waiting
20 outside?

21 A While they are waiting outside.

22 Q And then are you aware of any projections

EXHIBIT F

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

- - - - -x
NORFOLK SOUTHERN RAILWAY :
COMPANY, : Case No. 1:08-CV-618
Plaintiff, :
vs. :
CITY OF ALEXANDRIA, et :
al., :
Defendants. :
- - - - -x
CITY OF ALEXANDRIA, :
Counterclaim Plaintiff, :
vs. :
NORFOLK SOUTHERN RAILWAY : Case No. 1:08-CV-618
COMPANY, :
Counterclaim Defendant, :
and :
RSI Leasing, Inc., :
Third Party Defendant. :
- - - - -x

CONFIDENTIAL DEPOSITION OF JAMES EUGENE REINER

Alexandria, Virginia
September 19, 2008

REPORTED BY:
DONALD R. THACKER

1 Deposition of JAMES EUGENE REINER, called
2 for examination pursuant to notice of deposition, on
3 Friday, September 19, 2008, in Alexandria, Virginia,
4 at the Offices of the Alexandria City Attorney, City
5 Hall, 301 King Street, Suite 1300, at 11:35 a.m.,
6 before DONALD R. THACKER, a Notary Public within and
7 for the Commonwealth of Virginia, when were present
8 on behalf of the respective parties:

9

10 W. ERIC PILSK, ESQ.
11 Kaplan, Kirsch & Rockwell LLP
12 1001 Connecticut Avenue, Northwest
13 Washington, DC 20036
14 202.955.5600 202.955.5616
15 Epilsk@kaplankirsch.com
16 On behalf of Defendants

17

18

19

20

21

- continued -

22

1 engines up the lead, he will go into the, our
2 ethanol facility, for conversation sake, if there is
3 19 railcars in our ethanol facility --

4 Q On CO 5?

5 A On CO 5, our contractor, RSI, depending on
6 which railcars he has unloaded, we will pull the
7 empties out, empty railcars out, typically shove
8 those empty railcars into rail Highway 1, or up to
9 VDPU track, get the loads in either rail Highway 1,
10 vice versa, and spot those on CO 5.

11 Q If I understand that, if I understand what
12 you are saying right, is your got a mix of empty and
13 full cars, tank cars on CO 5 from that day's work?

14 A Yes.

15 Q And you have just brought in a load of
16 full cars?

17 A We would have to pull the empties first,
18 to make room to place loads.

19 Q Okay. And do you get any instruction from
20 RSI or anyone else on the exact sequence of the
21 cars, how to place them?

22 A My -- sometimes there is instructions laid

1 on the desk at the yard office, but typically all of
2 the instructions that my train crew, my conductor
3 gets prints out on his work order.

4 Q Okay. Mr. Rosenthal from RSI, do you know
5 him?

6 A Yes.

7 Q He testified that his typical practice is
8 he does two things every day, he faxes what he
9 called a switch sheet, which I will just show you
10 which has previously been marked as RSI, I think
11 that is 10?

12 A Yes.

13 Q Is that, do you recognize that document?

14 A Yes, I do.

15 Q He called this a switch sheet and that he
16 faxes a copy of that to --

17 A To Atlanta.

18 Q He does not fax that to your office?

19 A No.

20 Q Do you ever see RSI 10?

21 A No.

22 Q And then he testified that he drops off

1 two documents in the yard office, one is what he
2 called an inventory list of all the cars that he has
3 got at that time in the transload facility and the
4 other is an indication of which cars need to be
5 pulled and where the new cars, the new loaded cars,
6 should be placed in the string. Is that consistent
7 with your understanding?

8 A Yes, yes, sometimes he does bring that
9 document and leave it for my conductor to make the
10 process more simplified.

11 Q Okay. Describe to me what your guys get
12 from Atlanta.

13 A I had actually printed out a copy to help
14 you understand it.

15 Q Okay.

16 A This is exactly what our yard crew, P52,
17 what they got over the printer last night, I printed
18 it this morning.

19 MR. BRYANT: I just want to make sure that
20 it is just not the kind of thing --

21 (Discussion off the record.)

22 MR. BRYANT: We are going to, do you want



KAPLAN KIRSCH ROCKWELL

December 8, 2008

Via E-Filing

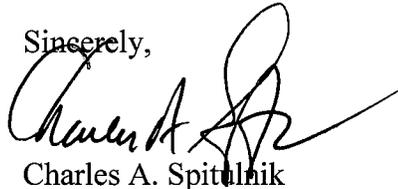
Honorable Anne Quinlan
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Petition for Declaratory Order
Finance Docket No. 35157

Dear Ms. Quinlan:

I am attaching a Motion for Protective Order filed by the City of Alexandria, Virginia in the above-referenced proceeding.

Sincerely,



Charles A. Spitulnik

Attachment

203810

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35157

THE CITY OF ALEXANDRIA, VA – PETITION FOR DECLARATORY ORDER

Dated: December 8, 2008

MOTION FOR PROTECTIVE ORDER

The City of Alexandria, VA (“the City”) hereby moves for a protective order pursuant to 49 C.F.R. § 1104.14(b), in order to allow the City to submit to the Surface Transportation Board (the “Board”) under seal its Reply to the Board’s November 6, 2008 Decision in STB Finance Docket No. 35157. The Confidential Version of the City’s Reply is submitted under separate cover marked “Confidential – Filed Under Seal Subject to a Request for a Protective Order” pursuant to 49 C.F.R. § 1104.14(a). A Public Version is also submitted today.

The City makes this motion because its Reply contains excerpts of deposition testimony and documents obtained by the City in discovery in ongoing litigation before the Eastern District of Virginia with Norfolk Southern Railway Co. (“NSRC”) and RSI Leasing, Inc. (“RSI”). *Norfolk Southern Ry. Co. v. City of Alexandria, et al.*, Case No. 1:08-CV-618 (E.D. Va.). Some of the deposition testimony contains confidential proprietary information relating to the commercial terms of NSRC’s relationship with RSI and details regarding the ethanol transloading business at NSRC’s Van Dorn Yard. If made public, such information has the potential to be competitively damaging to NSRC.

The City requests that the Board issue a protective order in the form that is attached to this Motion as Appendix A. The proposed form relies upon and is substantially the same as the September 9, 2008 Stipulated Protective Order between the parties in the ongoing district court

litigation. A copy of the Protective Order from the District Court is attached as Appendix B. The parties have agreed that information disclosed in the course of discovery in that proceeding may be used in the instant proceedings before the Board, so long as the information is relevant to the inquiries posed in the November 6 Decision in this proceeding.

While the proposed Protective Order follows the standard form for such orders, the City notes that the parties agreed to modify the Board's standard provisions related to disclosure of and access to information and documents designated or stamped as "HIGHLY CONFIDENTIAL". First, while the disclosure of such information is generally limited to outside parties and consultants subject to their signing a confidentiality undertaking, in this instance, the parties agreed that such information may be disclosed to certain City personnel in addition to outside counsel and consultants: the City Attorney, the Assistant City Attorney, Rich Baier, Tom Culpepper and Joan Wagner. These individuals are subject to the same requirement of signing a confidentiality undertaking.

Second, the parties established a procedure whereby any party with a need to access "HIGHLY CONFIDENTIAL" information or documents may notify the opposing party to identify the information and to whom it is to be disclosed. The opposing party has 24 hours to either consent or object to the additional disclosure. In the event the opposing party objects to the disclosure, such documents must not be disclosed until the objection is resolved either by agreement of the parties or by the Court.

For the reasons stated above, the City respectfully requests that the Board issue a protective order in the form that is attached to this Motion and allow the City's Reply to be filed under seal.

Respectfully submitted,



Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
Kaplan Kirsch & Rockwell, LLP
1001 Connecticut Ave., N.W.
Suite 800
Washington, DC 20036
(202) 955-5600

Ignacio B. Pessoa
Christopher P. Spera
Office of the City Attorney
300 King Street, Suite 1300
Alexandria, VA 22314
(703) 838-4433

Attorneys for the
City of Alexandria, VA

APPENDIX A

APPENDIX A

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts, confidential financial and cost data, and other confidential or proprietary business or personal information.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.

(d) “Proceedings” means those before the Surface Transportation Board (“the Board”) concerning any directly related proceedings covered by STB Docket No. 35157, and any related proceedings before the Board, and any judicial review proceedings arising from the same or from any related proceedings before the Board.

(e) “STB” means the U.S. Surface Transportation Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and

Confidential Documents as “CONFIDENTIAL.” Any information or documents so designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or a pleading or other paper to be submitted, filed or served in these Proceedings contains shipper-specific rate or cost data, trackage rights compensation levels or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as “HIGHLY CONFIDENTIAL.” Any information or documents so designated or stamped “HIGHLY CONFIDENTIAL” shall be handled as provided hereinafter.

4. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to outside counsel, the City Attorney, the Assistant City Attorney, Rich Baier, Tom Culpepper, Joan Wagner and/or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this order.

6. In the event that a party determines that additional individuals need access to “Highly Confidential” documents, the party must notify the opposing party (1) identifying the individual or individuals to whom the party would like to disclose “Highly Confidential” documents, and (2) identifying the “Highly Confidential” documents to be disclosed, after which the opposing party has 24 hours to either consent or object to the additional disclosure. If the opposing party objects to the additional disclosure, the “Highly Confidential” documents will not be disclosed until the objection is resolved either by agreement of the parties or by the Court.

7. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the STB to adjudicate such challenges.

8. Designated Material must be kept either in the office of outside counsel or in the office of the City Attorney, may not be copied and may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in the Proceedings, any related proceedings before the District Court, and/or any judicial review proceedings in connection with the Proceedings and/or with any related proceedings.

9. Any party who receives Designated Material in discovery shall return or destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the STB and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the STB unless the pleading or other document is submitted under seal pursuant to the rules of this Board.

11. No party may present or otherwise use any Designated Material at a hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the STB to whom relevant authority has been lawfully delegated by the STB, and has accompanied such submission with a written request that the STB (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

12. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 9 of this Protective Order.

13. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2 or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904 or of any other relevant provision of the ICC Termination Act of 1995.

14. All parties must comply with all of the provisions of this Protective Order unless the STB determines that good cause has been shown warranting suspension of any of the provisions herein.

15. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

EXHIBIT A

UNDERTAKING

CONFIDENTIAL INFORMATION

I, _____, have read the Protective Order served on _____, governing the production and use of Confidential Information and Confidential Documents in STB Docket No. 35157, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. 35157, before the Surface Transportation Board (“Board”), and/or any judicial review proceedings in connection with STB Docket No. 35157. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that, at the conclusion of this Proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that the Parties or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed: _____

Position: _____

Affiliation: _____

Date: _____

EXHIBIT B

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel] [consultant] [other] for [Party to Proceeding], for whom I am acting in this Proceeding. I have read the Protective Order served on _____, governing the production and use of Highly Confidential Information and Highly Confidential Documents in STB Docket No. 35157, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Highly Confidential Information or Highly Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. 35157 before the Surface Transportation Board (“Board”), or any judicial review proceedings in connection with STB Docket No. 35157. I further agree not to disclose any Highly Confidential Information, Highly Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners. At the conclusion of this Proceeding (including any proceeding on administrative review, judicial review, or remand), I agree to promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that the Parties or other parties producing Highly Confidential Information or Highly Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed: _____

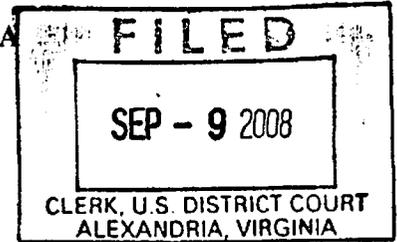
Position: _____

Affiliation: _____

Date: _____

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



NORFOLK SOUTHERN RAILWAY
COMPANY,

Plaintiff,

v.

Case No. 1:08-CV-618

CITY OF ALEXANDRIA, *et al.*,

Defendants.

CITY OF ALEXANDRIA,

Counterclaim Plaintiff,

v.

Case No. 1:08-CV-618

NORFOLK SOUTHERN RAILWAY
COMPANY,

Counterclaim Defendant,

and

RSI LEASING, INC.,

Third Party Defendant.

STIPULATED PROTECTIVE ORDER

THIS DAY came the parties, by counsel, and pursuant to the Federal Rules of Civil Procedure and move for entry of an agreed protective order;

AND IT APPEARING to the Court for good cause shown that the order should be entered, it is hereby ORDERED that documents disclosed pursuant to this litigation will be handled as follows:

1. For purposes of this Protective Order:

(a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts, confidential financial and cost data, and other confidential or proprietary business or personal information.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.

(d) “Proceedings” means those before the U.S. District Court for the Eastern District of Virginia (“District Court”) concerning the complaint, counter-complaint and any other directly related proceedings covered by Docket No. 1:08-CV-618, and any related proceedings before the District Court, and any judicial review proceedings arising from the same or from any related proceedings before the District Court.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents so designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains shipper-specific rate or cost data, trackage rights compensation levels or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped "HIGHLY CONFIDENTIAL" shall be handled as provided hereinafter.

4. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to outside counsel, the City Attorney, the Assistant City Attorney, Rich Baier, Tom Culpepper, Joan Wagner and/or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this order.

6. In the event that a party determines that additional individuals need access to “Highly Confidential” documents, the party must notify the opposing party (1) identifying the individual or individuals to whom the party would like to disclose “Highly Confidential” documents and (2) identifying the “Highly Confidential” documents to be disclosed, after which the opposing party has 24 hours to either consent or object to the additional disclosure. If the opposing party objects to the additional disclosure, the “Highly Confidential” documents will not be disclosed until the objections is resolved either by agreement of the parties or by the Court.

7. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the District Court or with a magistrate judge or other officer to whom authority has been lawfully delegated by the District Court to adjudicate such challenges.

8. Designated Material must be kept either in the office of outside counsel or in the office of the City Attorney, may not be copied and may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in the Proceedings, any related proceedings before the District Court, and/or any judicial review proceedings in connection with the Proceedings and/or with any related proceedings.

9. Any party who receives Designated Material in discovery shall return or destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the District Court and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the District Court unless the pleading or other document is submitted under seal pursuant to the rules of this Court.

11. No party may present or otherwise use any Designated Material at a District Court hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the District Court, to a magistrate judge or to another officer to whom relevant authority has been lawfully delegated by the District Court, and has accompanied such submission with a written request that the District Court, the magistrate judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

12. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 9 of this Protective Order.

13. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1,2 or 3 above, such production, disclosure, holding, and use of the materials and of

the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

14. All parties must comply with all of the provisions of this Protective Order unless the District Court or a magistrate judge or other officer exercising authority lawfully delegated by the District Court determines that good cause has been shown warranting suspension of any of the provisions herein.

15. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

Entered this 9th day of September, 2008

/s/Thomas Rawles Jones, Jr.

Judge

WE ASK FOR THIS:

Gary A. Bryant
Virginia State Bar No. 27558
Counsel for Norfolk Southern Railway Company
and RSI Leasing, Inc.
WILLCOX & SAVAGE, P.C.
One Commercial Place, Suite 1800
Norfolk, Virginia 23510
(757) 628-5500 Telephone
(757) 628-5566 Facsimile
gbryant@wilsav.com

J. Frederick Sinclair
Virginia State Bar No. 08073
Counsel for Norfolk Southern Railway Company
and RSI Leasing, Inc.
J. FREDERICK SINCLAIR, P.C.
100 N. Pitt Street, Ste. 200
Alexandria, Virginia 22314
(703) 299-0600 Telephone
(703) 299-0603 Facsimile
fred@jfsinclairlaw.com

W. Eric Pilsk, Esquire
Charles A. Spitulnik, Esquire
Counsel for the City of Alexandria
KAPLAN KIRSCH & ROCKWELL, LLP
1001 Connecticut Avenue, N.W., Ste. 905
Washington, DC 20036
Telephone: (202) 955-5600
epilsk@kaplankirsch.com
cspitulnik@kaplankirsch.com

Christopher P. Spera, Esquire
Ignacio B. Pessoa, Esquire
Counsel for the City of Alexandria
OFFICE OF THE CITY ATTORNEY
301 King Street, Ste. 1300
Alexandria, Virginia 22314
Telephone: (703) 838-4433
Christopher.Spera@AlexandriaVa.Gov