Jan. 12, 2006

Ms. Marilyn Levitt
Designated Official, Information Quality Guidelines
Surface Transportation Board
1925 K Street, N.W., 7th Floor
Washington, DC 20423-0001

Re: Request for Correction of Errors per Ex Parte No. 587

Dear Ms. Levitt:

Pursuant to ¶ 7a of the Information Quality Guidelines adopted by the Surface Transportation Board ("STB") on October 1, 2002 in Ex Parte No. 587, Snavely King Majoros O'Connor & Lee, Inc. (Snavely King or SK) hereby submits a Request for Correction of Errors. This Request for Correction of Errors relates to the Revenue Shortfall Allocation Method ("RSAM") factors that the STB has calculated for the Grand Trunk Corporation ("GTC") for the years 2002 and 2003.

Paragraph 1a requires that any request for correction of errors contain four items of information, as follows:

1. An explanation of how the requestor is affected by the information error.

In its December 27, 1996 Decision in Ex Parte No. 347 (Sub 2) *Rail Rate Guidelines – Non-coal Proceedings*, the STB identified three benchmarks by which it will test the reasonableness of rail rates for small shipments of captive shippers. One of those benchmarks is the Revenue Shortfall Allocation Method ("RSAM") factor. This factor was defined as follows:

> "The RSAM benchmark measures the uniform markup above variable costs that would be needed from every shipper of potentially captive traffic (the >180 traffic group) in order for the carrier to recover all of its URCS fixed costs"

As explained in the accompanying testimony of Tom O'Connor, Snavely King clients have a number of traffic lanes that might qualify for the small shipment rate guidelines set forth in the Board's December 27, 1996 decision. If the RSAM for any railroad is incorrectly calculated so as to be extraordinarily

high, then Snavely King, its clients, and others are deprived of an opportunity to challenge the rates of that railroad. As explained herein, Snavely King and at least one of its clients believe that the RSAMs for the Grand Trunk Corporation ("GTC") are extraordinarily and incorrectly high; either due to being incorrectly calculated, or due to being based on incorrect cost inputs.

2. A description of the factual error or noncompliance with STB or Office of Management and Budget (OMB) guidelines, including the name or number of the document in which it appears and how it was disseminated to the affected person.

As described in greater detail in Mr. O'Connor's testimony, the RSAM factors for the GTC for the years 2002 and 2003 appear extraordinarily and unreasonably high relative to (1) the three constituent railroads that have been combined to make up the GTC and (2) all other Class I railroads. These factors are calculated annually by the STB from cost and performance data submitted by each railroad in STB Report Form R-1. The RSAM factors are calculated by the STB with and without an "efficiency adjustment" and are disseminated each year in public notices titled "Rate Guidelines – Non-Coal Proceedings" under the caption of Ex Parte 347 (Sub 2).

In 2002, the Canadian National Railway consolidated the cost reporting for its three U.S. railroads, the Illinois Central ("IC"), the Grand Trunk Western ("GTW") and the Wisconsin Central ("WC"). The consolidated railroad, the GTC, was thus a composite of three railroads, two of which had previously submitted separate R-1 forms. In the last year prior to the consolidation, 2001, the IC's RSAM was 182 percent (with efficiency adjustment) and the GTC's RSAM was 146 percent. In stark contrast, during the first year of consolidated reporting, 2002, the GTC's efficiency-adjusted RSAM was 415; and in 2003 it was 390 percent.

The only possible factor that could account for this dramatic increase would be the addition of the WC to the consolidated cost report. That is highly unlikely. First, the WC is a Class II railroad and therefore relatively small in comparison to the two Class I railroads. Moreover, there is no indication that the WC was a high-cost operation. To the contrary, the WC's operating ratio during the 1996-2000 period prior to consolidation averaged about 76 percent, well below all Class I railroads, except CN. Based on the data presented in Mr.

O'Connor's testimony, CN achieved an even lower cost average operating ratio of 75 percent during the 1996-2000 period, followed by an unprecedented low cost average operating ratio of 68 percent during the 2001 - 2005 year to date period.

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

3. The factual basis for the assertion that the Board-disseminated information contains an error, including a recommended correction, if possible.

Snavely King submits that the foregoing analyses of operating ratios and comparisons with the RSAMs of the GTC constituent railroads and the other Class I railroads indicate that the GTC composite RSAMs are incorrect. Snavely King has reviewed the underlying RSAM work papers made available by the STB. However Snavely King defers to the STB, at this time, on estimating the correct RSAM factors. Such correction requires detailed investigation into the basis and calculation of the source cost and performance data, which is the proper role of the STB. Snavely King would be glad to work with the STB in those analyses.

4. Contact information for the affected person, including name, address, daytime telephone number, and e-mail address.

Tom O'Connor or Charles W. King
Snavely King Majoros O'Connor & Lee, Inc.
1220 L Street, N.W. Suite 410
Washington, DC 20005
(202)371-9149 or (202)371-9156
FAX: (202)842-4966
SKMOLTom1@aol.com; charlieking@snavely-king.com

Accordingly Snavely King respectfully requests the Board, in a timely manner, to:

1. Investigate the revenue and cost reporting of GTC,
2. Correct the revenue and cost data and
3. Restate the RSAM benchmarks for GTC for both 2002 and 2003.

Respectfully Submitted,

Charles W. King
Admitted to Practice, April 10, 1967

cc: Chairman Buttrey
Vice Chairman Mulvey

BEFORE THE SURFACE TRANSPORTATION BOARD In Ex Parte No. 587

Formal Request for Correction And Restatement of Revenue Shortfall Allocation Method (RSAM) Factors of the Grand Trunk Corp. For Use in Ex Parte 347 (Sub No. 2)

Verified Statement of

TOM O'CONNOR
Vice President
Snavely King Majoros O'Connor & Lee, Inc.
1220 L Street, N.W.
Washington, D.C.

January 12, 2006

STB Ex Parte No. 587
Formal Request for Correction and Restatement Of Revenue Shortfall Allocation Method (RSAM) Factors of the Grand Trunk Corp. For Use in Ex Parte 347 (Sub No. 2)

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1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

I. Introduction

My name is Tom O'Connor. I am Vice president of Snavely King Majoros O'Connor & Lee, Inc. (Snavely King or SK). Snavely King is an economic and management consulting company focusing on transportation and utilities. Snavely King has been in business for more than 35 years, serving transportation clients including railroads, shippers and government agencies, in the United States, Canada and Europe. Appendix A contains my resume and a summary of my testimony before the Surface Transportation Board (STB), the Interstate Commerce Commission (ICC), as well as State Courts, Federal Courts and Arbitration and Mediation panels.

This Request for Correction of Errors results from research building on the small shipment rate reasonableness approach I suggested in previous testimony before the Surface Transportation Board[1] and applied in the first small shipment case ever brought before the Board.[2] The development and application of this successful approach reflected consideration of a number of key factors including:

- Chairman Nober's March 31, 2004 statements before Congress and the Chairman's January 12, 2005 presentation to the Midwest Association of Rail Shippers. These statements confirmed that rate reasonableness is an essential part of the mission for the STB and affirmed the interest of the STB in solving rate reasonableness challenges.
- Experience as a witness in numerous Interstate Commerce Commission (ICC) and Surface Transportation Board (STB) cases, and experience as an advisor in numerous rail rate and service negotiations.
- Experience as AVP Economics of the Association of American Railroads (AAR), as part of the railroad team that advocated and helped install rail deregulation. Our recommended approach highlights the importance of the three Long Cannon Factors, an essential part of the design for rail deregulation.

[1] See Tom O'Connor Verified Statement in Ex Parte 646, June 2004; and Comments in Ex Parte 657, April 2005

[2] See STB Docket NOR 42093, evidence filed by Tom O'Connor on behalf of BP Amoco. This case was filed in May 2005, the first small shipment rate reasonableness case ever filed with the STB. The case was successfully resolved through mediation in June 2005.

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

- Decades of experience working with railroad data both in the ICC and STB accounting systems and in internal railroad management accounting systems

This formal request for correction and restatement of the RSAM factors of the Grand Trunk Corporation ("GTC") is filed under STB Ex Parte No. 587; Correction of Errors in Information Disseminated by the Board.[3] Our request is prompted by anomalies discovered in preparing a rate reasonableness case for filing in Ex Parte 347 (Sub No. 2).

The STB Information Quality Guidelines set forth three main aspects of information quality:[4]

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

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

The STB and GTC data we present shows clearly the disabling effect of the misstated GTC RSAM factors. Not only the SK clients, but all CN rail shippers are disadvantaged by this error. Moreover the GTC RSAM error also disadvantages all other railroads which have reported accurate and reliable data for use in the STB rate reasonableness review.

This is a serious, pervasive and persistent error. We request prompt review of the RSAM data and processes reflected in the GTC RSAM parameters and we request timely correction of the errors in those data and processes.

As the STB noted in its 1996 decision, Ex Parte 347 (Sub No. 2) was initiated by the ICC to develop simplified evidentiary procedures for rail rate reasonableness cases where the procedures adopted in Coal Rate Guidelines[5] cannot practicably be applied.

[3] See Information Quality Guidelines STB Decision, Ex Parte 587, Service Date October 1, 2002
[4] STB Decision, Ex Parte 587, October 1, 2002
[5] Coal Rate Guidelines--Nationwide, 1 I.C.C.2d 520 (1985), aff'd, Consolidated Rail Corp. v. United States, 812 F.2d 1444 (3d Cir. 1987).

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

Under the Interstate Commerce Act, as revised by the ICCTA[6], The STB was charged with protecting individual captive shippers from unreasonably high and unfair rate levels. 49 U.S.C. 10101(6), 10701(d) (1). In doing so, the STB was specifically directed to consider the three "Long-Cannon factors",[7] set forth in 49 U.S.C. 10701(d) (2). The Long-Cannon factors are:

- Long-Cannon-1. The amount of traffic transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic;

- Long-Cannon-2. The amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

- Long-Cannon-3. The carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

The STB was also directed to ensure that carriers have the opportunity to earn revenues that are adequate to cover costs, allow replacement of needed assets, and provide a fair return on investment. 49 U.S.C. 10101(3), 10704(a) (2).

II. Findings

The specific lanes on which one of the Snavely King clients planned to register a formal complaint are small shipment lanes originating at a point at which Canadian National's subsidiary U.S. railroad, the GTC, offers the only rail service connecting the origin facility and the destination location. The GTC also offers the only rail service from the origin facility to the interchange point, connecting there with rail service to the destination location. Due to various impediments,

[6] The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA) directed the Board to complete Ex Parte 347 Sub No.2 by January 1, 1997. 49 U.S.C. 10701(d)(3).

[7] The factors were named for Senator Long and Senator Cannon who introduced the amendment that added these provisions to the Staggers Rail Act of 1980 (Staggers Act).

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

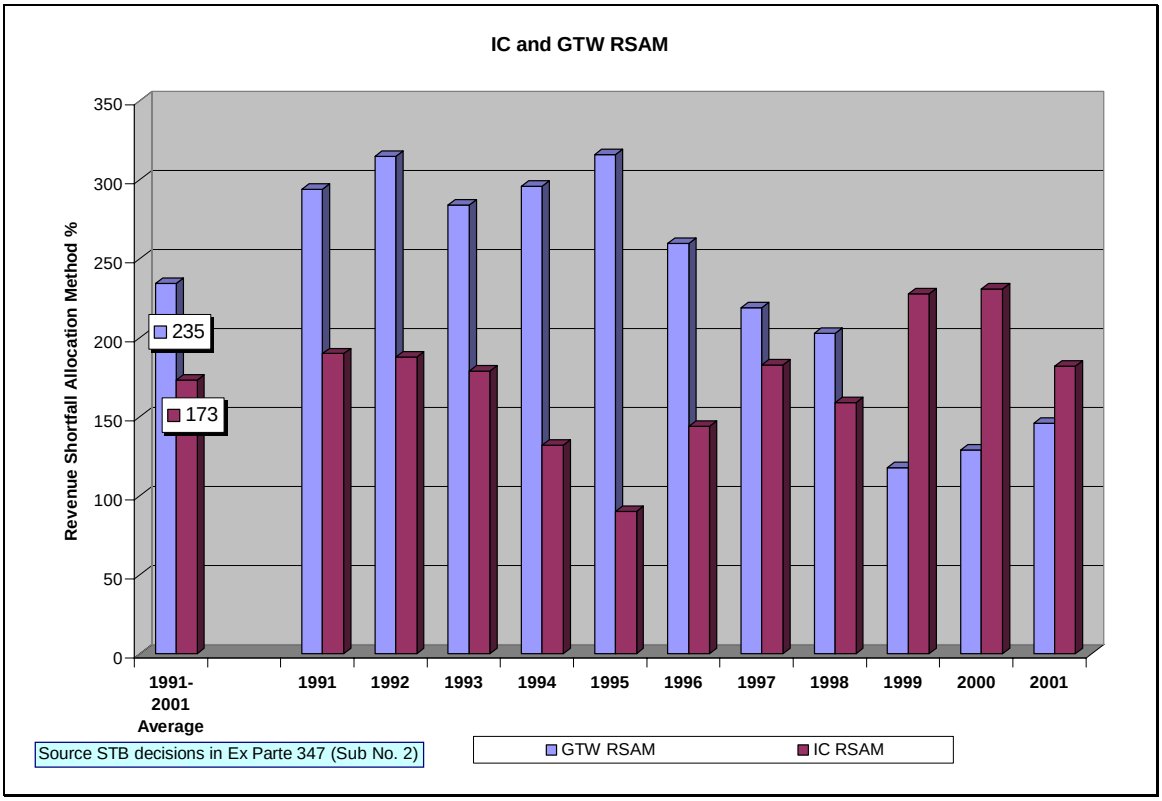
truck, barge and pipeline transportation is either not available or not economically feasible.

Our client requested that SK analyze the rail rates and costs on these lanes with a view to determining the reasonableness of the rates. SK was asked to prepare to present its findings to the Board, if negotiations with CN failed to resolve the rates reasonableness issues.

We analyzed those lanes and began testing the rates against the RSAM benchmarks calculated by the STB. After initially finding some of the RSAM parameters to be anomalous, we conducted further investigation of the RSAM data and the processes. Based on those analyses, we have found some of the RSAM parameters to be defective. In fact, the flaws in the GTC RSAM factors are so severe as to render the GTC RSAM factors unusable for their intended purpose of rate reasonableness review.

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

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com



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

The following chart reports the simple average RSAM of IC and GTW.

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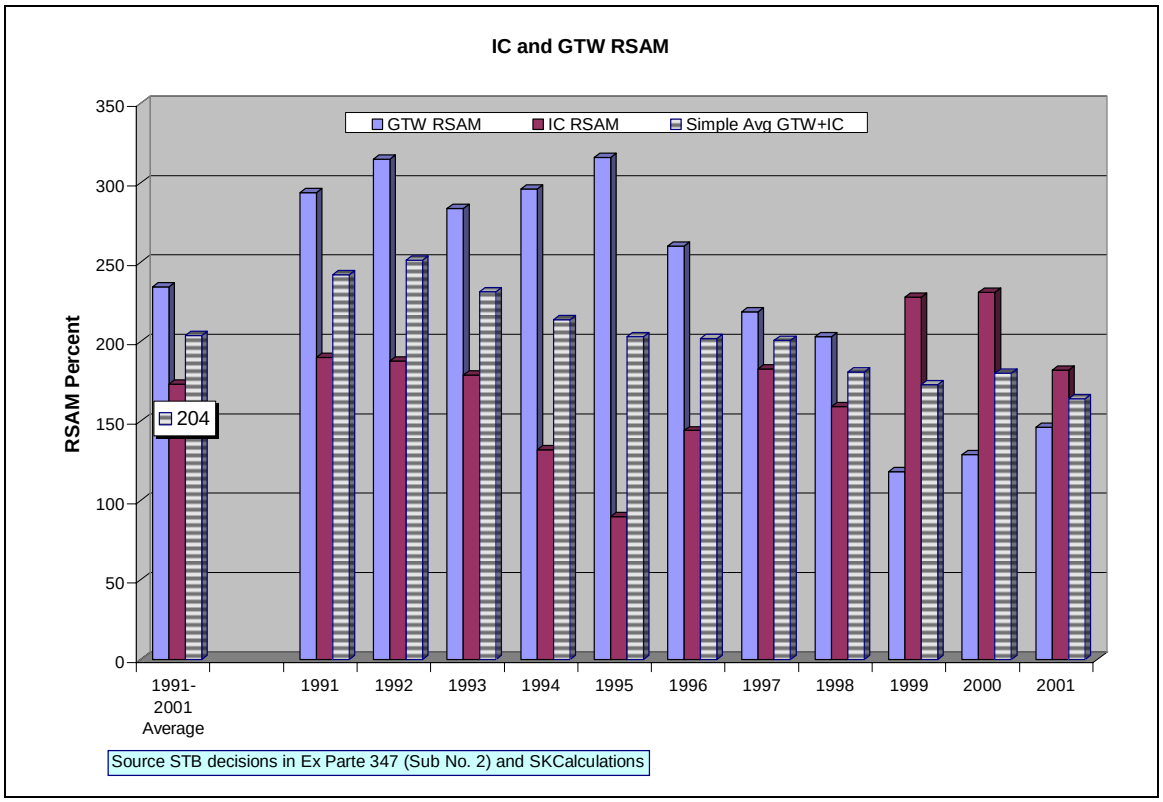

The preceding chart shows that on average the combined values of the IC and GTW RSAM averaged 204 percent. The two individual RSAM's would have been applied separately. The combined average is merely for comparison purposes; to assist in evaluating the GTC RSAM introduced in 2002

The GTC RSAM, as shown in the following chart, is much higher than either the IC or GTW RSAMs. This is an incongruous result given the fact that the GTC is presented as a combination of the IC, the GTW and the Wisconsin Central (WC). As we will show, the WC is a low cost railroad with less revenue than either the IC or the GTW. The WC can not be the cause of the dramatic upward surge in GTC RSAM. That GTC RSAM discontinuity is both unsupported and unexplained.

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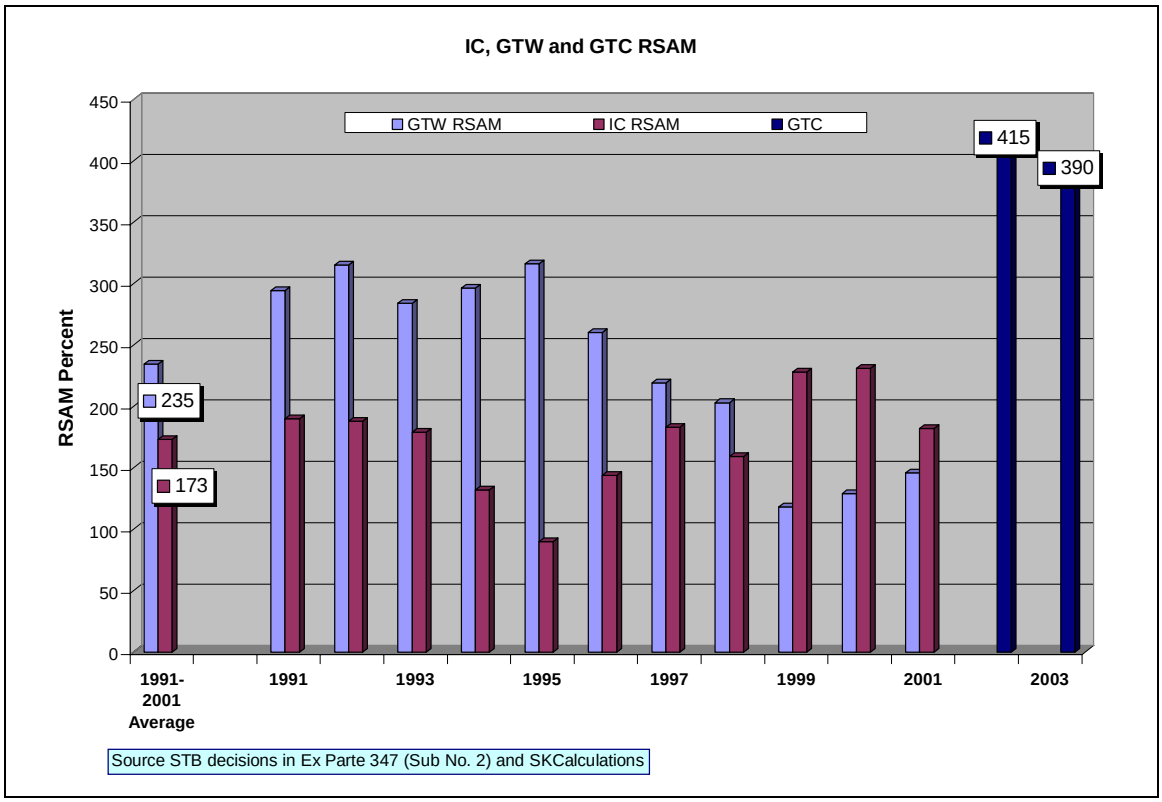
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com



The disconnect between the predecessor IC and GTW RSAM's and the successor GTC RSAM's is abundantly clear. Inclusion in GTC of the Wisconsin Central (WC) does not explain the difference and the disconnect. WC is a low cost carrier. By definition, as a Class II carrier, WC has revenue levels well below the Class I IC and GTW. As shown in the following table, WC is a very low cost carrier by Class I standards, posting operating ratios as low as 73 percent in recent years.

Wisconsin Central Operating Ratio

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

Source: Wisconsin Central 2000 10-k

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

The core issue in these incongruous results is the accounting of the CN-GTC[8] costs. These costs flow into the calculation of the Uniform Rail Costing System (URCS) unit costs, and the URCS costs are used to calculate the STB's Ex Parte 347 sub-2 benchmark parameters.[9] Higher URCS unit costs lead to lower Revenue to Variable Cost (R/VC) ratio for given lanes. Lower R/VC's move more traffic below the 180% R/VC (or Revenue Cost Ratio- RCR) threshold. This in turn leads to a higher RSAM benchmark. Higher RSAM benchmarks make a small shipment rate case less feasible. Based on SK initial review, the 2004 CN/GTC URCS unit costs, while lower than previous years, are still well above other Class I Railroads unit costs[10]. This result runs counter to all the available evidence which shows CN as the lowest cost railroad in North America.

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

CN Financial Data

Line		1995	1996	1997	1998	1999	2000
1	Revenues (cn$ millions)	$ 3,862	$ 3,911	$ 4,283	$ 5,137	$ 5,236	$ 5,428
2	Operating Expenses	$ 3,437	$ 3,323	$ 3,356	$ 3,856	$ 3,769	$ 3,780
3	**Rail Operating Ratio (Ln. 2 / Ln. 3)**	**89%**	**85%**	**78%**	**75%**	**72%**	**70%**

		2001	2002	2003	2004	2005
1	Revenues (cn$ millions)	$ 5,652	$ 6,110	$ 5,884	$ 6,548	$ 5,354
2	Operating Expenses	$ 3,872	$ 4,240	$ 4,107	$ 4,380	$ 3,448
3	**Rail Operating Ratio (Ln. 2 / Ln. 3)**	**69%**	**69%**	**70%**	**67%**	**64%**

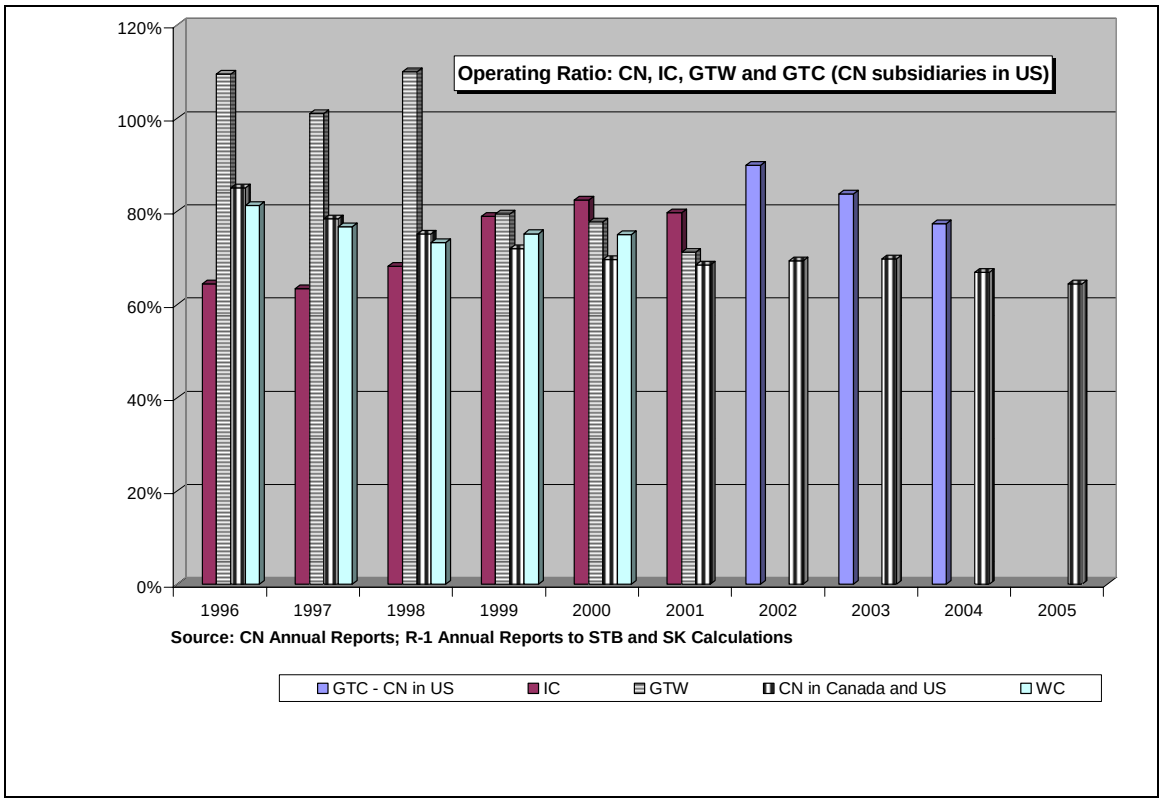
Notes: 1 - 1995 to 1997 figures exclude the IC

2 - 1998 figures have been presented on a pro - forma basis. Pro forma refers to the consolidation of the financial data of Illinois Central Corporation (IC) assuming the acquisition and control of IC occurred on January 1, 1998
3 - The 2001 figures include Wisconsin Central Transportation Corporations from October 9, 2001
4 - 2004 includes Great Lakes Transportation LLC's railroads and related holdings (GLT) and BC Rail from May 10 and July 14, respectively
5 - 2005 reflects the first 9 months of the year

Source: CN Investor Fact Books and Annual Reports 2000 to 2005

The following chart presents the operating ratios of all of the carriers involved in the GTC RSAM; CN, IC, GTW, WC and GTC, which is CN subsidiary operations in the US consisting of the combination of IC, GTW and WC. The operating ratio data stands in clear contrast to the inexplicable surge in GTC RSAM.

[8] CN-GTC is the subsidiary of the Canadian National (CN). The CN-GTC is made up of the Illinois Central, Grand Trunk Western, and the Wisconsin Central.
[9] URCS is the Uniform Regulatory Costing System adopted as the standard rail costing system by the ICC and the STB and all Class I railroads.
[10] Further analysis of CN-GTC 2004 Unit costs is needed



With the sole exception of the GTW during the 1996 -1998 period, all of these carriers show consistently low operating ratios. Such operating ratios are inconsistent with the egregiously and inexplicably high 2002 and 2003 GTC RSAM's.

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

Before any CN shipper makes a decision to go forward with a rate complaint, the unexplained CN-GTC accounting anomalies and the related incongruous RSAMs need to be resolved. That simple fact has led to the filing of this complaint under the auspices of STB Ex Parte 587.

In Ex Parte 587 the STB adopted final Information Quality Guidelines (I.Q. Guidelines). As the STB stated in its October 1, 2002 decision, the I.Q. Guidelines set out STB management procedures for reviewing and substantiating the quality of information before it is disseminated to the public. The guidelines also contain the procedures for obtaining a correction of information that does not comply with the I.Q. Guidelines. We are following and applying those procedures for obtaining a correction of GTC RSAM factors.

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

Prior to any rate reasonableness cases against CN, the accounting issues need to be addressed, and they are best addressed separately from those cases. Raising the accounting issues in a rate reasonableness proceeding or choosing to use a substitute set of unit costs such as IC or Region 4 (East) unit costs would complicate the process and could lead to prolonged litigation with a needlessly uncertain outcome. Accordingly we have brought the defective data for correction in this Information Quality proceeding.

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

In contrast to the RSAM pattern, we see more moderate results when we examine the GTC pattern for actual RCR's above 180%; as the following table and chart shows.

Actual Average Mark-up Percentages for Traffic Above 180% R/VC					
Railroad / Region	4 - Year Average	2003	2002	2001	2000
GTC		252	228		
SOO	227	219	205	256	228
KCS	241	219	238	263	242
NS	212	209	221	219	200
CSX	194	187	207	192	191
BNSF	252	216	258	266	266
UP	226	210	236	234	222
Eastern		202	214		
Western	238	213	247	249	242
National		208	234		

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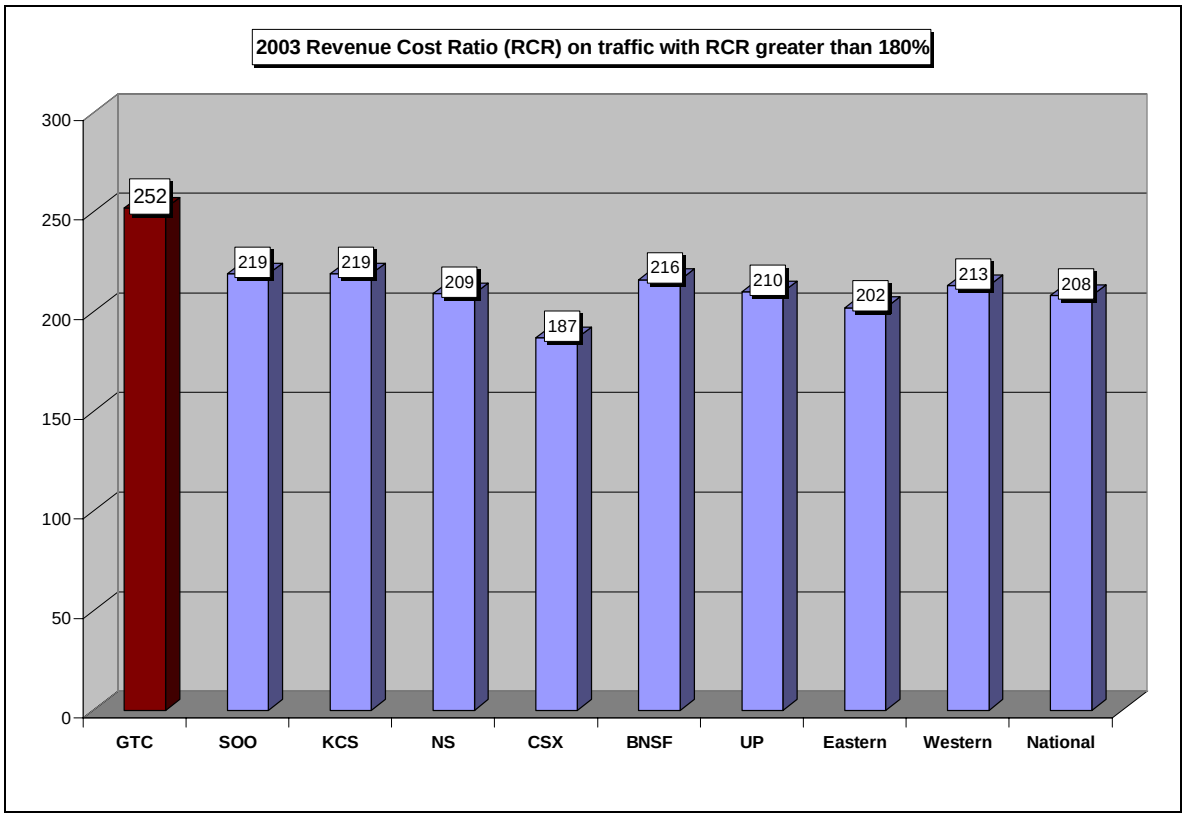
The following charts report the RCR>180 data, for each railroad or region:



The pattern for RCR>180 is clearly different from the incongruous and unexplained RSAM pattern, which is shown in the following chart:

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202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

RSAM With efficiency Adjustment As % of GTC RSAM			
		2003	2002
GTC		100%	100%
SOO		58%	57%
KCS		67%	64%
NS		46%	43%
CSX		63%	54%
BNSF		60%	66%
UP		53%	47%
Eastern		58%	52%
Western		56%	54%
National		57%	53%

GTC RCR>180 parameters are high. However some railroads or regions came close to GTC in 2002 in terms of RCR>180. In stark contrast, no other railroads or regions have RSAM results anywhere close to the CN GTC. Again the GTC RSAM data fail to pass the test of reasonableness.

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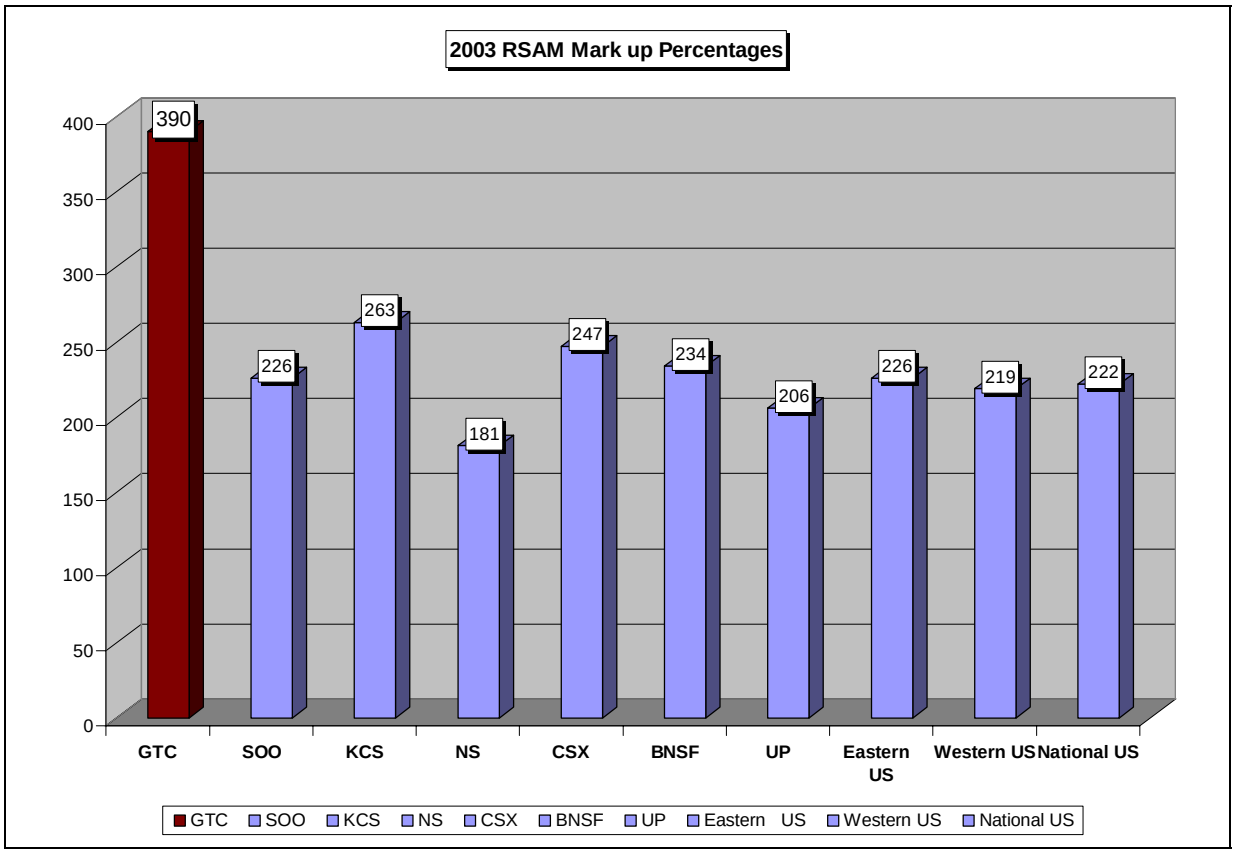
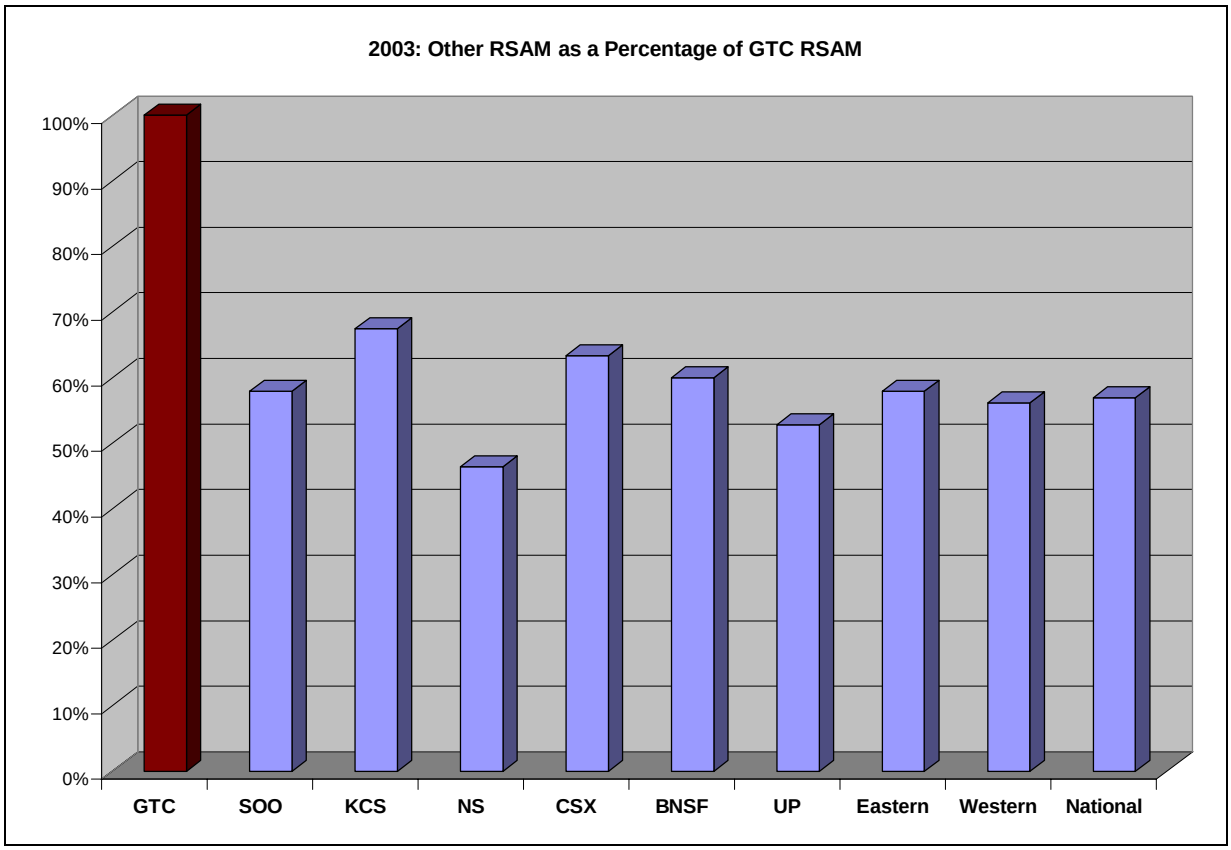
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com



The preceding graph and the following graphs show quite clearly the imbalance in GTC RSAM data:

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com



The GTC RSAM bears no resemblance to the RSAM's of any other railroad or region, or to the US rail industry as a whole.

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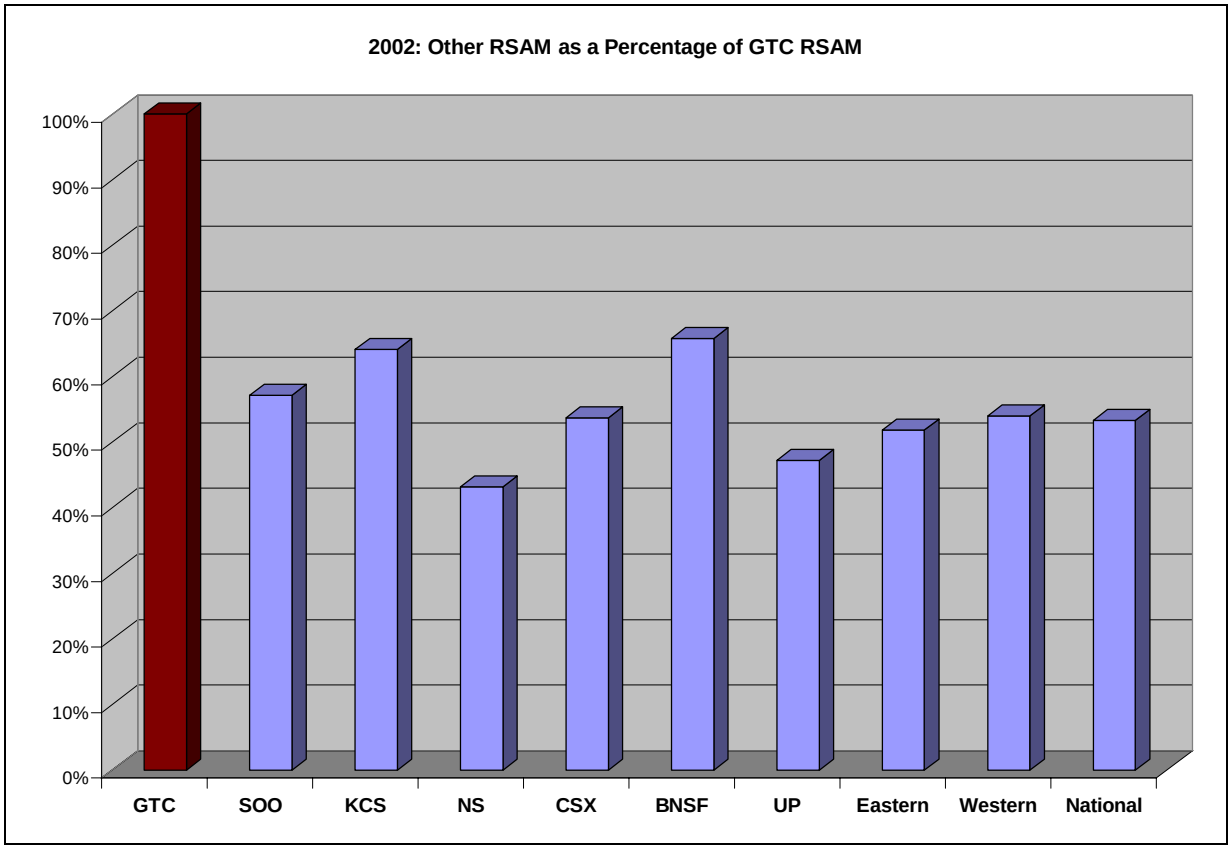
We see the same disturbing pattern in the 2002 GTC RSAM data:



The GTC RSAM parameters bear little resemblance to the other RSAM results.

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

Regulatory Policy Implications

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

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

Surface Transportation Board (STB) Large Case Rate Regulation Access Criteria

To qualify for rate reasonableness review the traffic at issue must meet the following criteria:

- The revenues generated by that rate are more than 180% of the variable costs associated with handling the traffic involved.
- The traffic is not under contract. Under 49 U.S.C. 10709(c), the reasonableness of a contract rate cannot be challenged.
- The commodity is not exempt. Rates for some traffic and services are exempted from regulation pursuant to 49 U.S.C. 10502 or its predecessor (former 49 U.S.C. 1050
- The qualitative market dominance limitation of 49 U.S.C. 10707(a)-(b) requires that the traffic not have access to effective transportation competition
- The traffic is not exempted under the grandfather provision of section 229 of the Staggers Act, which conferred regulatory immunity upon the rate levels that were in place at that time and not successfully challenged by a certain date

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

As noted above, the lanes we have analyzed meet these criteria.

Eligibility for Small Shipment Rate Reasonableness Review

To determine eligibility for the STB small shipment rate reasonableness review, we briefly summarize in the following table, how the GTC lanes would meet the criteria for access to STB rate reasonableness assistance and show how the GTC RSAM errors disadvantage the GTC shippers and other railroads.

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

Surface Transportation Board (STB) Small Shipment Case Rate Regulation Criteria

Check List of Requirements to Secure STB Rate Reasonableness Assistance	
1	**The lane(s) must meet the Revenue Cost Ratio (RCR) threshold criteria for access to rate regulation.**
2	**The lane(s) must meet and does meet the requirement that the lane not be under contract. The prior contract on the lane expired on ____, 2005 and GTC has declined to offer an acceptable contract at this time.**
3	**The lanes also meet the STB simplified guidelines recommended by SK in July 2004 testimony, based on three revenue-to-variable cost (R/VC or RCR) benchmark figures as starting points for a case-by-case reasonableness analysis.**
	• **SK has reviewed some of the work papers underlying the RSAM's. Concurrently with this petition, SK has requested access to all of the STB data and workpapers underlying the STB Ex Parte 347 Sub No. 2 RCR and RSAM parameters. SK has also requested access to the entire costed STB waybill sample to enable us to review and analyze the RCR's on comparable rail freight. Such data is necessary to evaluate compliance with the Long Cannon factors mandated by the Staggers Rail Act.**
3	• **The STB Revenue Shortfall Allocation Method (RSAM) benchmark reflects the carrier's particular revenue needs by examining the average markup that the carrier might charge its potentially captive traffic to meet those needs.** • **SK has identified serious flaws in the GTC RSAM data, which preclude use of that data in rate reasonableness reviews.** • **The IC and GTW RSAM markups bear little relationship to the GTC RSAM markups which were offered as the combination of IC, GTW and Wisconsin Central.**
	• **With the efficiency adjustment, the IC RSAM markups ranged from 90% to 231%.** • **With the efficiency adjustment, the GTW RSAM markups ranged from 118% to 316%.** • **The 2002 – 2003 GTC RSAM markup was significantly above this level and ranged from 390% to 415%.** • **The 1991 – 2001 Simple Average of the IC + GTW RSAM markup is 204%.** • **The 2002- 2003 average GTC markup is almost double the predecessor level: 403%.** • **The increase in the GTC RSAM is not explained by the addition of the Wisconsin Central which is a low cost carrier.**

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Check List of Requirements to Secure STB Rate Reasonableness Assistance	
3b	• The STB Revenue Variable Cost Actual Average Mark Up Percentage (RCR>180) benchmark reflects the carrier's actual average markup that the carrier charges on traffic with RCR above 180%. The R/VC>180 benchmark tests whether the traffic at issue bears a disproportionate share of the carrier's revenues by examining the markups applied by the carrier to its other potentially captive traffic. The 2002 GTC RCR>180 markup was 252% in 2003 and 228% in 2003.
3c	• The STB process also may use a Revenue Variable Cost Mark Up Percentage on comparable traffic (R/VC comp or RCR comp). The RCR comp benchmark reflects demand-based differential pricing principles (by measuring the markups applied to similar traffic).This benchmark reflects the defendant carrier's actual average markup that the carrier charges on traffic similar to the issue traffic.
	• SK has requested access to the costed STB waybill sample to test and validate this benchmark. • The requested complete access to the waybill sample is vital to evaluating the application of the Long Cannon factors
4	• After resolving the accounting and RSAM issues we will demonstrate that on this lane the SK client does <u>not</u> have access to effective transportation competition. The effective transportation competition test determines whether the traffic at issue could move by competing rail or by alternative modes
4a	• SK analyses rule out truck, barge and pipeline competition based on interviews with the SK client managers. Those interviews focused on product characteristics, investment in loading and unloading facilities, road and bridge conditions, road congestion, difficulties associated with permitting and other impediments.

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The preceding table shows the central role of the RSAM and the disabling effect of the misstated RSAM factors. All CN rail shippers are disadvantaged by this error. Moreover the GTC RSAM error also disadvantages all other railroads subject to STB rate reasonableness review. Accordingly, the data deficiencies in the GTC's RSAM factors must be resolved before any GTC rate reasonableness review can proceed.

III. Summary

We conclude with the main point of this filing. Small shipment rate reasonableness reviews are based on the availability of reliable and accurate data. We have shown that the GTC RSAM data is deficient in both areas. The data are neither accurate nor reliable. That data quality gap must be filled before any STB rate reasonableness review involving GTC can proceed.

The STB Information Quality Guidelines set forth three main aspects of information quality:[11]

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

The evidence indicates that the CN GTC RSAM data fails on all of these counts.

The STB and GTC data we have presented shows clearly the disabling effect of the misstated GTC RSAM factors. Not only the SK client, but All CN rail shippers are disadvantaged by this error. Moreover the GTC RSAM error also disadvantages all other railroads which have reported accurate and reliable data for use in the STB rate reasonableness review.

This is a serious, pervasive and persistent error. We request prompt review of the RSAM data and processes reflected in the GTC RSAM parameters and we request correction of the errors in those data and processes.

Respectfully Submitted,

Tom O'Connor

cc: Chairman Buttrey
Vice Chairman Mulvey

[11] STB Decision, Ex Parte 587, October 1, 2002

1220 L St NW Washington, DC, 20005
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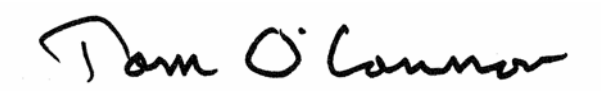
IV. VERIFICATION

I, Tom O'Connor, declare that the foregoing statement is true and correct and was prepared by me or at my direction. Further, I certify that I am qualified and authorized to file this statement.

Executed on January 12, 2006.



Tom O'Connor

Subscribed and sworn to before me this 12th day of December 2006 in the District of Columbia.

Notary Public

My Commission expires: March 14, 2006

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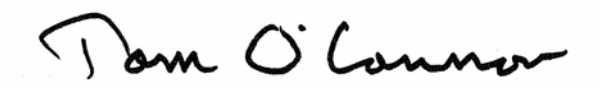
Certificate of Service

I certify that this filing was served this day on all parties of record by first class US Mail or more expeditious method of delivery.

January 12, 2006.



Tom O'Connor

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

V. Capabilities

Resume

Of

Tom O'Connor
Vice President

Snavely King Majoros O'Connor & Lee, Inc.

1220 L St NW
Washington DC 20005

Snavely King Majoros O'Connor & Lee, Inc., Washington, DC

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

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

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

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

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

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

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

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

Mr. O'Connor has analyzed more than 45 rail merger scenarios and cases. He has provided expert testimony before state and federal courts and commissions in the U.S. and Canada on economic and policy issues. He has also testified as an expert on computerized transportation analytical systems, rail operations, anti trust issues and transportation economics and costing. Mr. O'Connor has served

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

as an impartial and expert monitor of data and processes at issue in litigation on transportation.

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

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

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

DNS Associates Inc., Washington, DC

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

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

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

Mr. O'Connor also advised the U.S. Rail Accounting Principles Board on the costing aspects of regulatory reform policies.

He provided expert testimony on coal rates, computerized data bases and cost systems and rail cost issues before the Interstate Commerce Commission.

Association of American Railroads, Washington, DC

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

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

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202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

testimony on behalf of the railroad industry in numerous cases before the Interstate Commerce Commission and state regulatory commissions. He also appeared regularly in national forums on economic issues.

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

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

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

Consolidated Rail Corporation, PA

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

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

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

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

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202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

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

- **Consultant (1976 - 1977)**

Mr. O'Connor conducted and directed numerous transportation- related projects in the U.S. and Canada ranging from national logistics analyses to site-specific studies. He specialized in costing systems and appeared as an expert witness on such systems in a precedent setting proceeding before a Canadian Crown Commission.

U.S. Railway Association, Washington, DC

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

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

Interstate Commerce Commission,

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

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

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202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

Education

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

Professional Organizations

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

Academic honors

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

Military

- U.S. Army; Sergeant, Combat Engineers

Security Clearance

- Secret

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

Summary of Expert Testimony

Of

Tom O'Connor
Vice President

Snavely King Majoros O'Connor & Lee, Inc.

1220 L St NW
Washington DC 20005

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

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

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

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

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

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

Tom O'Connor Testimony in Federal Regulatory Cases

- **The comparative merits of the Interstate Commerce Commission's Uniform Rail Costing System (URCS) and Cost Center Accounting** submitted to the ICC on behalf of the US Railroad industry in February 1980 in Docket No. 37203.

- **The economics and computer technology of the Light Density Line Methodology used to define Conrail**, submitted to USRA before a special hearing in 1980.

- **Computerized transportation database design and use.** Verified statement was submitted to ICC on behalf of the US Railroad industry in Nov 1980 in Ex Parte No. 385.

- **The comparative merits of two regulatory rail-costing systems**, URCS and Rail Form A, submitted to the ICC on behalf of the US Railroad industry in March 1981, in Ex Parte 399.

- **Testimony on the Preliminary 1979 Rail Cost Study as released by the ICC, calling for adopting and improving URCS**. This was submitted to the ICC on behalf of the US Railroad industry in Docket No. 37203 in February 1982.

- **Rail costing using Rail Form a costs applied to service units generated by a computerized rail network model**. This verified statement was submitted to the ICC on behalf of a shipper located in Nevada in July 1985 in ICC Docket Nos. 37809 and 37815S.

- **Rail costing, also using Rail Form A costs applied to service units generated by computerized network model**. This verified statement was submitted to ICC on behalf of a shipper located in Nevada in November, 1986 in Docket No. 37809, 37815S.

- **Stand Alone Rail Costing, for use in rate reasonableness, using service units developed with a series of computerized network model**. This verified statement was submitted to the ICC on behalf of the Association of American Railroads in September, 1988 in Docket No. 38239S

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- **Rail merger conditions, developed using rail costs and a computerized network model**. This verified statement was submitted to the ICC in March 1994 in Finance Docket No. 21215 (Sub. No. 5)

- **The effects of computerized methods on rail operations and costs.** This verified statement was submitted to the ICC on behalf of Coleto Creek Utility in July 1994 in Docket No. 41242.

- **The cost of rail coal transportation using URCS costs and A Stand Alone Network.** This verified statement was submitted to the ICC on behalf of West Texas Utilities in April 1995 in Docket No. 41191.

- **Further testimony on the cost of rail coal transportation using URCS costs and a Stand Alone Network**. This verified statement was submitted to the ICC on behalf of West Texas Utilities in July 1995 in Docket No. 41191.

- **Oral Argument on the effects of the BN-SF merger on rail costs and service presented before the full Commission** in August, 1995 on behalf of Universal Forest Products in Finance Docket No. 32549.

- **The effects of the UP-SP merger on costs, infrastructure and operations**. Verified statement was submitted to ICC on Behalf of Kansas City Southern Railroad in March 1996 in Finance Docket No. 32760.

- **Competitive truck transportation market**. Joint Verified Statement with James Wells was submitted to Surface Transportation Board (STB) on behalf of TJ MAXX on June 22, 1998 in Docket No. 41192

- **The investment plans of UP-SP to remedy effects of the UP-SP merger.** Verified statement was submitted to STB on Behalf of Kansas City Southern Railroad in June, 1998 in Finance Docket No. 32760 UP-SP Merger Oversight Proceeding

- **The Arkansas and Missouri Railroad Request For Discontinuance Waiver** Filed on Behalf of Kansas City Southern Railroad. Verified

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

statement was submitted to Surface Transportation Board (STB) in November1998 in Finance Docket No. 32670.

- **Further testimony on the competitive truck transportation market**. Joint Verified Statement with James Wells was submitted to Surface Transportation Board (STB) on behalf of TJMAXX in January, 1999 in Docket No. 41192

- **Rail Merger Guidelines to develop new and improved merger analysis processes**. Verified statements were submitted to Surface Transportation Board (STB) on behalf of OxyChem, Oxy Vinyls, BASF and Williams Energy Services in May 2000 in Ex Parte 582.

- **Reply Testimony on Rail Merger Guidelines to develop new and improved merger analysis processes**. Reply Verified statements were submitted to Surface Transportation Board (STB) on behalf of OxyChem, Oxy Vinyls, BASF and Williams Energy Services in June 2000 in Ex Parte 582.

- **Testimony on Rail Costs and Rates**. Verified statement was submitted to Surface Transportation Board (STB) on behalf of Peabody Energy Company June 2003 in Docket 42077.

- **Testimony on Rail Costs and Rates**. Verified statement was submitted to Surface Transportation Board (STB) June 2004 in Ex Parte 646.

- **Testimony on Rail Costs and Rates**. Oral testimony was presented to Surface Transportation Board (STB) July 2004 in Ex Parte 646.

- **Testimony on Rail Costs and Rates**. Written and Oral testimony was presented to Surface Transportation Board (STB) May and June 2005 on behalf of BP Amoco in STB Docket NOR 42093, the first ever small shipment rate case brought before the STB.

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com

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

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

- **Expert Testimony Centering On Transportation Rates And Costs And The Implications For Antitrust Matters.** This testimony involved research and development of computerized cost and rate analyses for rail and truck service to Arizona and surrounding areas. The evidence is focuses on resolving antitrust allegations regarding certain construction materials. This evidence was developed and submitted on behalf of Solcon in May, 2003 with oral testimony at deposition in 2003. The case was under adjudication as Case No. CIV 01 01269 PHX ROS, United States District Court for the District of Arizona and has been settled.

- **Expert Testimony Centering On Commuter Railroad Operations And Costs**. This testimony involved design and development of computerized costing models of commuter rail operations. The evidence was central to arbitration to resolve subsidy disputes between New York and Connecticut. This evidence was developed and submitted on behalf of Metro North Commuter Railroad in August 1996 with oral testimony presented in February 1997. The case was decided successfully in favor of the client.

- **Expert testimony centering on the effects of a series of explosions on transportation operations and costs**. This was submitted on behalf of Washington Construction Company in a damages case filed by Burlington Northern Railroad in state court in Montana, First Judicial District Court, and Cause Number ADV 91-

1885. The case went to a jury trial and was decided successfully in favor of the client in September 1993.

- **Expert testimony centering on computerized network models**. This was submitted in an antitrust case filed on behalf of Geoplex in U.S. District Court for the Eastern District of Virginia, Geoplex Corporation v. CACI, Inc. Civil Action No. 89-610-A. This evidence was developed and submitted in November 1989.

- **Expert testimony centering on transportation operations and costs**. This was submitted on behalf of the Canadian provinces of Alberta, Manitoba and Saskatchewan before a Canadian Crown Commission in a series of hearings held in Winnipeg, Manitoba and Regina, Saskatchewan in 1976. This led to an historic change in Canadian transportation regulation.

- In addition to these cases, while AVP of Economics at the AAR Mr. O'Connor submitted testimony on rail costs and operations on behalf of the rail industry before State regulatory commissions in Indiana, Pennsylvania and New York.

1220 L St NW Washington, DC, 20005
202 371-9149 ■ www.Snavely–King.com ■ email skmoltom1@aol.com