

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

Crystal M. Zorbaugh

Direct Dial: (202) 663-7831
czorbaugh@bakerandmiller.com

March 5, 2021

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VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
March 5, 2021
Part of
Public Record

Re: BNSF Railway Company – Terminal Trackage Rights – The Kansas City
Southern Railway Company And Union Pacific Railroad Company,
FD 32760 (Sub-No. 46)

Dear Ms. Brown:

Enclosed for filing in the above-referenced matter is an errata correcting certain erroneous calculations and statements in The Kansas City Southern Railway Company's January 26, 2021 filing entitled "KCS's Opening Statement and Evidence on Compensation Concerning BNSF's Use of the Rosebluff Lead." KCS's errata is being filed in both a "Public Version" and a "Highly Confidential" version. If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com. If I am unavailable, you may contact my colleague, William A. Mullins, by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com

Sincerely,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

**ERRATA TO KCS'S OPENING STATEMENT AND EVIDENCE ON COMPENSATION
CONCERNING BNSF'S USE OF THE ROSEBLUFF LEAD**

**Adam J. Godderz
David C. Reeves
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Tel: (816) 983-1387
Fax: (816) 983-1227**

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
Telephone: (202) 663-7823
Facsimile: (202) 663-7849**

**Attorneys for The Kansas City Southern
Railway Company**

March 5, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
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**ERRATA TO KCS'S OPENING STATEMENT AND EVIDENCE ON COMPENSATION
CONCERNING BNSF'S USE OF THE ROSEBLUFF LEAD**

While reviewing the evidence submitted last month, Dr. Kevin Neels and his team at Brattle discovered certain calculations previously submitted related to the interest rental component of SSW Compensation were incorrect. Upon discovering the error, counsel for The Kansas City Southern Railway Company ("KCS") directed Dr. Neels to rerun the calculations and prepare replacement evidence (including workpapers) that could be submitted to the Board in this proceeding. To correct this error, KCS is submitting this errata to correct the following evidence:¹

- Corrected pages for pages 25, 33, 39, 40-44, and 51 of Exhibit A – Verified Statement of Dr. Kevin Neels;
- A corrected page 32 (correction is to footnote 96) of Exhibit B – Verified Statement of Julie M. Carey; and
- Corrected pages for KCS's legal evidence, specifically pages 9-11.

Additionally, on March 2, 2021, KCS received follow-up questions from BNSF related to Dr. Neels's workpapers. Today, KCS will be providing BNSF, both workpapers that needed to be reproduced as part of the errata and additional workpapers requested by BNSF. To ensure that

¹ The text for the corrections have been changed to red to make the revisions easily discernible.

the Board has a complete record, KCS is producing the same workpapers to the Board as part of this response. Please feel free to contact me, should you have any questions regarding this errata.

Respectfully submitted,

Adam J. Godderz
David C. Reeves
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Tel: (816) 983-1387
Fax: (816) 983-1227

/s/ Crystal M. Zorbaugh
William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
Telephone: (202) 663-7823
Facsimile: (202) 663-7849

March 5, 2021

Attorneys for The Kansas City Southern
Railway Company

cc: Parties of Record

B. Using the ATC Methodology to Calculate the Revenue Generated by the Lead

1. Key Inputs

As the description above indicates, the ATC calculation requires a number of inputs, including traffic density, fixed costs, variable costs, and revenue. Below I describe how each of these inputs was calculated.

Traffic Density

The fixed cost portion of the ATC calculation described above requires information on the total number of tons of freight traversing each rail segment used by Rosebluff Lead traffic. The required total must include all traffic crossing each of these segments, including traffic that neither originates nor terminates on the Rosebluff Lead. To calculate these totals, I turned to the carload waybill sample. To identify the segments used by each movement in the sample I used the Brattle rail network model. This model is described in Appendix C. It produces a list of all the rail segments used by a specific railroad in order to carry a shipment from a specific origin to a specific destination. I used this model to produce such a list for all of the shipments contained in the sample.¹⁴ To each of the segments used by a shipment, I attached the weighted tons associated with that shipment. For each segment in the rail network, I then summed across all shipments using the segment to compute the total number of weighted tons on the segment. For

¹⁴ Coding errors and missing data sometimes made it impossible to determine the routing for a shipment. This outcome occurred in 4% of total movements across the 2017 and 2018 waybill samples. My calculations ignore these unroutable shipments. Because they were predominantly off-lead movements, the effect of ignoring them was generally to reduce off-Lead traffic densities, which in turn had the effect of increasing the amount of revenue allocated to the off-Lead portions of Lead shipments. Thus, the overall effect of these errors is to *reduce* the calculated value of the Lead.

**TABLE 6: CONTRIBUTION ASSOCIATED WITH ROSEBLUFF LEAD SEGMENTS TRAVERSED BY
LYONDELL MOVEMENTS **REVISED**]]**



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Sources and Notes:

Calculated using the ATC methodology as described in this statement.

3. Development of Valuation Multipliers

Taking the contribution associated with the Rosebluff Lead as earnings, calculation of a measure of capitalized earnings required next a capitalization factor. For this purpose, I considered two alternatives. The first was based on the ratio of the enterprise value to total railroad-wide contribution. The second was based upon the reciprocal of the pre-tax industry-wide weighted average cost of capital (“WACC”) as calculated by the STB.

Enterprise value is a widely used measure of the overall market value of a public company. It is defined as the sum of the market value of the company’s outstanding stock (also

4. Calculation of the Value of the Rosebluff Lead Segments Used by Lyondell Traffic

Next, I calculate the value of the Rosebluff Lead segments used by Lyondell traffic, using the results from the contribution and multiplier calculations. In Table 9, I present calculations that multiply, for each year, (1) the contribution generated by the Rosebluff Lead segments used by Lyondell traffic by (2) the two multipliers calculated above in Table 7 and Table 8. Using the enterprise value-based multiplier, which for reasons I explain above is more reliable than the WACC-based multiplier, the capital asset value associated with the relevant segments ranges from [[REDACTED]] across the two years. The average is [[REDACTED]].

**TABLE 9: CALCULATION OF ASSET VALUES FOR ROSEBLUFF LEAD SEGMENTS USED BY
LYONDELL TRAFFIC **REVISED**]]**



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Sources and Notes:

[1] - [2], [4] - [5]: Calculated using the ATC methodology.

[3] = [1] + [2]

[6] = [4] + [5]

[7]: Average of [3], [6]

[8] - [11]: Multipliers, as calculated in Table 7 and Table 8.

[12] = [1] x [8]

[13] = [2] x [9]

[14] = [12] + [13]

[15] = [4] x [10]

[16] = [5] x [11]

[17] = [15] + [16]

[18]: Average of [14], [17]

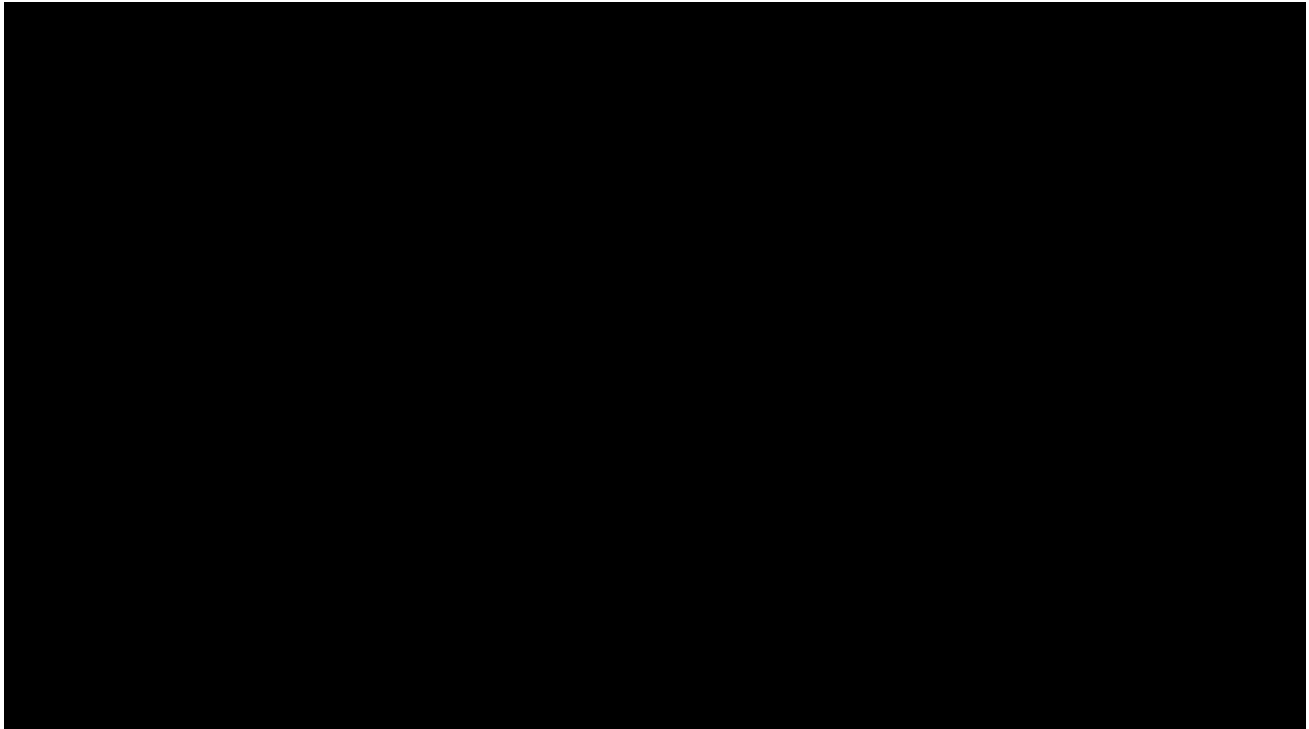
5. Calculation of Traffic Levels on Rosebluff Lead Segments Used by Lyondell Traffic

To complete the interest rental component calculation, a measure of car miles is necessary, so that component (c) can be expressed on a per car mile basis. As I discussed above, it is important that the set of movements from which I calculate car miles be limited to the same set of movements that were used to calculate contribution, namely those movements from the KCS and UP traffic tapes to on-lead customers. I also restrict this calculation to only include miles on those segments used by Lyondell traffic. This simple calculation yields totals of **67,471** car-miles in 2017 and **73,017** car miles in 2018.

6. Calculation of Rental Cost of Capital Per Car Mile

Next, I calculate the rental cost of capital per loaded car mile. I first multiply the capital asset values derived in Table 9 by the STB-approved industry-wide WACC to determine an annualized capital asset value. Next, I divide by the loaded car miles in the corresponding year, to calculate rental rate on a per loaded car mile basis. I then adjust this rental rate to account for inflation since 2017-18. Finally, I take a simple average of these inflation-adjusted rental rates and find a rate of **[[REDACTED]]** per loaded car mile.

**TABLE 10: CALCULATION OF INTEREST RENTAL COMPONENT OF ROSEBLUFF LEAD
SEGMENTS USED BY LYONDELL TRAFFIC, PER CAR MILE **REVISED** [[**



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Sources and Notes:

[1], [6]: Contribution generated by Rosebluff Lead links needed to service Lyondell/Equistar, as calculated using the ATC method by The Brattle Group.

[2] = [1] * STB-calculated industry WACC for 2017 (10.04%).

[3], [8]: Car-miles on the relevant links. Limited to those movements included in the ATC calculation from the KCS and UP traffic tapes.

[4] = [2] / [3]

[5] = [4] * 2017 Inflator calculated using the STB's Inflation-Adjusted Index (1.14).

[7] = [6] * STB-calculated industry WACC for 2017 (12.22%).

[9] = [7] / [8]

[10] = [9] * 2018 Inflator calculated using the STB's Inflation-Adjusted Index (1.08).

[11]: Average of [5], [10]

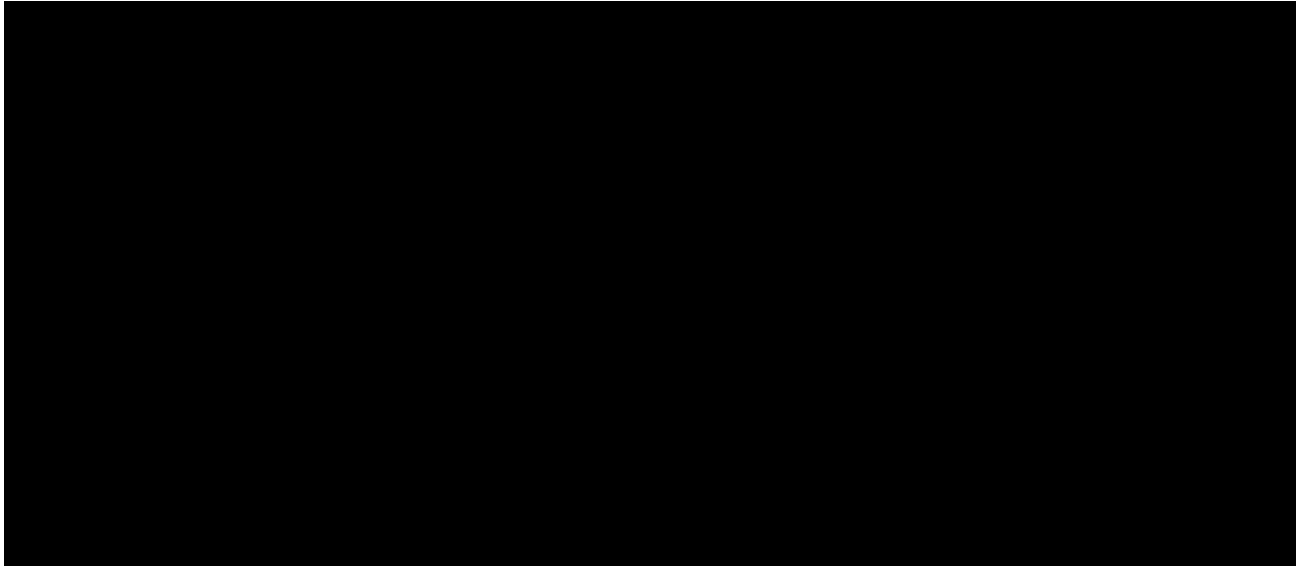
[12]: Calculated from Routing Results.

[13] = [11] x [12]. Minor differences due to rounding.

X. Calculation of SSW Compensation

I complete my implementation of the SSW Compensation methodology by combining the results of Table 3 and Table 10, with one additional adjustment. My instructions are to implement the SSW Compensation methodology and present results on a dollar per *total* car mile basis. In other words, the trackage fee will eventually be paid on both loaded and empty car miles, and thus the denominator used to calculate the rate should include both loaded and empty car miles on the Rosebluff Lead segments used by Lyondell traffic. My calculation of the operating and maintenance costs are already expressed on a per total car mile basis.

However, as explained above, I initially calculated the rental cost component on a dollar per *loaded* car mile basis to maintain consistency between the traffic used in my ATC calculation and the traffic in the denominator. Thus, I make a final adjustment to convert to per total car mile basis, using information first presented in Table 3 on the ratio of empty car miles to loaded car miles. Table 11 below displays the results of my final calculations. I calculate an SSW Compensation rate of **\$16.67** per total car mile, including both loaded and unloaded car miles.

TABLE 11: SSW COMPENSATION METHODOLOGY SUMMARY [REVISED] [[

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[1]: Provisionally set to zero, as discussed in Section VIII.A.

[2]: See calculations in Table 3.

[3]: See calculations in Table 10.

[4]: Ratio of total car miles per loaded car miles, from Table 3. Calculation is described in Section VIII.B, and is provided in my workpapers.

[5] = [3] / [4]

[6] = [1] + [2] + [5]

on the network of the railroad carrying the shipment that is closest to the off-network station is located within 5 kilometers of that station, this routine will find the shortest path from the carrying railroad's closest point to the off-network station, regardless of the ownership status of the track traversed by this path, and assume for purposes of routing the specific shipment that the carrying railroad was able to utilize this path.

The network model was able to route successfully 96 percent of total movements in the 2017 and 2018 waybill samples.³⁷ The routed mileages produced by the model were very close to the routed miles reported for those same movements in the waybill sample. The correlation coefficient between waybill sample mileage and associated network mileage is 0.974.³⁸

³⁷ This figure does not include movements that took place entirely in Canada or Mexico, or movements that started and ended at the same location according to the Waybill Sample. These movements were dropped in a pre-processing step.

³⁸ This figure excludes certain routes for which the waybill mileage and the network mileage are not directly comparable, including movements partially outside the United States, for which a routing was only generated for the U.S. portion.

compensation, if there is underreporting of those inputs.⁹⁴ In addition, revenue apportionment, attribution, or allocation of revenue to the specific trackage at issue in this case as compared to the revenue to move the carloads to the customer destination (or the reverse for an inbound movement) could artificially understate the economic value.⁹⁵

Notably, the fact that the CE valuation approach used by SSW Compensation and presented by Dr. Neels is far lower than the market-based reciprocal switching rates for comparable products and areas to Lake Charles (Section V), further demonstrates that the value of KCS's 50% ownership share of the Rosebluff Lead has diminished due to the economic outcome of the artificially low and non-market-based that eroded rates, volumes, and revenues to KCS on the Rosebluff Lead.⁹⁶ Consequently, such an approach will not adequately compensate the landlord railroad. As such, an SSW Compensation rate (based on CE) in the circumstances in Lake Charles does not allow a carrier to sufficiently contribute to KCS's network or improve revenue adequacy.

Indeed, industry experts around the world have recognized that SSW does not account for lost opportunity profit that contributes to the rest of a railroad system associated with the competitive market access.⁹⁷

C. An SSW Compensation rate (Based on RCNLD) may likely lead to an artificially low and inappropriate rate

As discussed throughout this report, a real-world market-based rate is superior to the imputation of a regulatorily determined rate estimate in the present case. Reconstruction new

⁹⁴ For example, the SSW rate (based on CE) may use conservative traffic volumes. [REDACTED]

[REDACTED] In addition, to the extent that the revenues reported are for only a portion of the movement from Lake Charles to the end customer (i.e. for traffic that is temporarily moved into storage) additional revenues and contribution are achieved for the traffic movement.

⁹⁵ Assumptions about revenue divisions applicable to the issue trackage arise in formalized rate reasonableness case complaints that rely on a stand-alone cost (SAC) analysis.

⁹⁶ I understand that Dr. Neels calculates the SSW Compensation rate (based on CE) for the interest rental component equal to **\$88.82** and **\$45.94** per car based on the enterprise value and WACC method, respectively. See Verified Statement of Dr. Neels at Table 10.

⁹⁷ For example, International Transport Forum ("ITF") which is a 59-country (including the U.S.) 'think tank' consortium ITF (2018), "Regulatory Capacity Building: Tools for Analysing Rail Connectivity," OECD Publishing, Paris, at 22. See Opening Comments of The Association of American Railroad, Reciprocal Switching, EP 711 (Filed Oct. 26, 2016); and see also, Opening Comments And Evidence Of BNSF Railway Company, Reciprocal Switching, EP 711, at pages 11-13 (Filed October 26, 2016).

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the capital assets that make up the Rosebluff Lead, by focusing on the value of the Rosebluff Lead assets to its owners. To do this, he first identified all of the owner traffic that uses the Rosebluff Lead. He then isolated on a movement-by-movement basis the portions of their revenues and costs that can be attributed to the Rosebluff Lead, using standard STB methods. See Neels VS at 15. From the results of these calculations, he calculated the total contribution (defined as revenue minus variable cost as determined by URCS generated by the Rosebluff Lead for its owners.) Id. Then, based on the relationship of each owner's total contribution to an appropriately adjusted measure of enterprise value,¹⁶ he calculated the portions of that value attributable to the Rosebluff Lead. This is known as Capitalized Earnings ("CE"), which provides a measure of the current market value of the Rosebluff Lead.¹⁷ The steps underlying this calculation are explained fully in the Neels VS.

Dr. Neels then used the resulting valuation to calculate an annual interest rental amount by multiplying the valuation by the industry-wide cost of capital rate. This interest rental component (component (c) of SSW Compensation) was then applied to the Rosebluff Lead on a per car mile basis. By applying the fundamental and Board recognized requirements of SSW Compensation, Dr. Neels calculated the interest rental to be **\$13.77**/per car mile for the Rosebluff Lead. See Neels VS at 44.

¹⁶ Enterprise value is a widely used measure of the overall market value of a public company. It is defined as the sum of the market value of the company's outstanding stock (also referred to as its market capitalization) and the value of its outstanding debt. For both UP and KCS, Dr. Neels calculated these values as of the end of calendar years 2017 and 2018.

¹⁷ The amount of contribution is reflective of current market conditions, including the competitive presence of BNSF. As such, KCS's and UP's earnings are actually lower than they otherwise would be if not for the presence of BNSF. As such, the CE approach does not truly reflect what the actual CE would be if BNSF were seeking access for the first time and had not already been granted access for the past 24 years.

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Typically, SSW Compensation includes component (a), which accounts for the variable cost incurred by the owning carrier due to the tenant carrier's operations over the owning carrier's track. Most commonly, variable costs covered in (a) include dispatching costs and costs related to clearing a track or other operational costs related to maneuvers necessary to mitigate the impact of another carrier's operations (BNSF) or delays associated with that carrier's operations. UP has told KCS that it does not anticipate any significant additional dispatching costs. BNSF has yet to conduct any operations over the Rosebluff Lead, so it is difficult for KCS (or UP for that matter) to quantify operational costs related to mitigating the presence of a third carrier over the Rosebluff Lead at this juncture.¹⁸ In light of these considerations, KCS is not including a calculation for (a); however, KCS continues to believe that BNSF should pay additional compensation when its operations are delayed or cause operational interferences on the Rosebluff Lead, which result in KCS incurring additional costs.¹⁹

Given that KCS's SSW Compensation calculation does not allocate costs for (a), Dr. Neels added the interest rental of \$**13.77**/per car mile (component (c) of SSW Compensation), to the per car mile actual maintenance and operation costs for the Rosebluff Lead (component (b) of SSW Compensation), \$2.89 per car mile, which resulted in an overall per car mile trackage

¹⁸ Such additional costs are difficult to calculate until BNSF commences operations, particularly given the operating flexibilities granted to BNSF in Decision No. 6.

¹⁹ BNSF should pay for any KCS external costs incurred by KCS due to BNSF's presence on the Rosebluff Lead. External costs are those that KCS would incur to its own operations as a result of any potential interference. For example, even if BNSF's train does not stop or switch in the Rosebluff Yard and BNSF operates wholly within UP's window, to the extent that BNSF delays KCS's use of its window and such delays create additional costs to KCS, BNSF should compensate KCS for those additional costs. Such additional costs that KCS could incur involve KCS paying overtime dollars, being forced to add crews, incurring additional car hire charges, incurring additional locomotive hours (BNSF proposed an hourly delay fee of \$842 with respect to one of its bridges), KCS experiencing delays in its ability to meet customer schedules, including possibly even paying delay penalties under its contracts, and possibly the need to hire additional manager(s).

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rights fee of \$**16.67**/per car mile. See Neels VS at 44. Dr. Neels's evidence is a fundamentally sound application of SSW Compensation.

Nonetheless, establishing compensation based on SSW Compensation will not make KCS whole and it is not a market-based methodology as required by condemnation principles. As the Board recognized in Decision No. 8, the trackage rights it granted to BNSF at Lake Charles are “[u]nlike a ‘typical’ grant of terminal trackage rights (e.g., the Beaumont and Shreveport segments that UP references), [due to] the Rosebluff Lead grant affect[ing] two different line owners, each subject to a different compensation scheme.” Decision No. 8 at 15. BNSF and UP both received various benefits by entering into a settlement agreement as part of the UP/SP merger.

By contrast, KCS received no benefits and continues to be penalized by that agreement, making a limited SSW Compensation inadequate compensation for what KCS has lost. As Professor Carey explains, despite the UP/SP merger occurring some 24 years ago, UP (by its own choice) has been under-compensated for 24 years, while KCS is yet to receive any payment for access to its property or compensation for either BNSF using the Lead to serve shippers at below-market rates or for the business losses KCS suffered due to BNSF’s presence on the Rosebluff Lead. No one denies that UP and BNSF have seen benefits from the merger. However, these benefits came at KCS’s expense, and calculating trackage rights compensation using SSW Compensation ignores the scope of KCS’s past losses and would only serve to exacerbate that harm unless a Market-Based Access Fee is established for the future.

III. APPLICATION OF SSW COMPENSATION WILL NOT MAKE KCS WHOLE AND IS NOT CONSTITUTIONALLY SOUND

In Decision No. 3, the Board-authorized BNSF’s terminal trackage rights over the Rosebluff Lead. However, the Board noted that “the question of compensation” required KCS to