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ENTERED
Office of Proceedings
April 13, 2021
Part of
Public Record

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April 13, 2021

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

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

ERRATA - PUBLIC

Dear Ms. Brown:

Last evening, The Kansas City Southern Railway Company (“KCS”) filed its reply filing entitled “KCS’s Reply Statement and Evidence on Compensation Concerning BNSF’s Use of the Rosebluff Lead.” This morning KCS discovered that Exhibit 1 to Exhibit D was inadvertently omitted. As such, KCS is preparing this errata, which impacts sequential page numbering 164-173. As you can see, Exhibit 1 to Exhibit D starts at page 164. KCS respectfully request that the Board and the parties simply substitute pages 164 to 194 (the end) in both the highly confidential and public versions filed last evening.

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

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

**RESPONSES AND OBJECTIONS OF BNSF TO THE KANSAS CITY
SOUTHERN RAILWAY COMPANY'S DISCOVERY REQUESTS RELATED
TO BNSF'S OPENING STATEMENT AND EVIDENCE ON COMPENSATION**

BNSF Railway Company ("BNSF") responds as follows to The Kansas City Southern Railway Company's ("KCS") Discovery Requests Related to BNSF's Opening Statement and Evidence on Compensation:

GENERAL RESPONSES

The following General Responses apply to each of KCS's document requests:

1. Where BNSF states that it will produce documents, BNSF will conduct a reasonable search for responsive, non-privileged documents, subject to any other qualifications specified in its response and the terms of the Protective Order in this proceeding.
2. Production of documents does not necessarily imply that they are relevant to or admissible in this proceeding and is not to be construed as waiving any of the general or specific objections stated below.

GENERAL OBJECTIONS

BNSF objects to KCS's discovery requests on the following grounds:

1. **Privilege.** BNSF objects to KCS's discovery requests to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege or protection. Any production of privileged or otherwise protected documents is inadvertent and shall not constitute a waiver of any claims of privilege or other protection.

2. **Relevance/Burden.** BNSF objects to KCS's discovery requests to the extent that they seek information or documents that are not directly relevant to this matter, to the extent that they seek documents in a form not maintained by BNSF in the regular course of business, to the extent that a response would impose an unreasonable burden on BNSF, to the extent that they seek "all" documents relating to a request, and to the extent that they seek information or documents that are as readily, or more readily, available to KCS as BNSF.
3. **Confidential Information.** BNSF objects to the KCS discovery requests to the extent that they seek information or documents that constitute or disclose confidential, proprietary, or sensitive nonpublic information. Subject to and without waiving this objection, BNSF will produce information responsive to KCS's discovery requests, if not otherwise objectionable, subject to the terms of the Protective Order in this proceeding. BNSF reserves the right to seek additional protection as needed.
4. **Third Party Information.** BNSF objects to the KCS discovery requests to the extent that they seek information or documents that constitute or disclose information that would result in the violation of any contractual obligation to a third party, or in the violation of 49 U.S.C. § 11904, which relates to the disclosure of certain shipper or consignee information.
5. **Settlement/Mediation.** BNSF objects to production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any related proceeding.
6. BNSF incorporates these General Objections into each Objection below as if fully set forth therein.

OBJECTIONS AND RESPONSES TO KCS INTERROGATORIES AND DOCUMENT REQUESTS ("DISCOVERY REQUESTS")

Discovery Request No. 1. Page 15 of Mr. Baranowski's Verified Statement states "KCS is not compensated for its Rosebluff Lead ownership share under BNSF's current access via reciprocal switch. There is no economic reason why that should change under BNSF direct access, which the Board has acknowledged may increase the efficiency of operations on the Rosebluff Lead."

- a. Identify and provide all work completed to support the statement that "...[t]here is no economic reason why that should change under BNSF direct access..."

- b. *Identify any and all factors and support for the statement that “..[t]here is no economic reason why that should change under BNSF direct access...”*
- c. *If Mr. Baranowski’s opinion is that there is no economic reason why KCS should be compensated for BNSF direct access, explain and provide support.*

BNSF Response:

- a. The basis for the identified statement is fully set forth in Mr. Baranowski’s Verified Statement and supporting work papers.
- b. The factors and support for the identified statement are fully set forth in Mr. Baranowski’s Verified Statement and supporting work papers. *See, e.g., Baranowski V.S. at 2, 14-15.* These include:
 - 1. KCS owns one half of the Rosebluff Lead;
 - 2. Under the conditions of use set by the Board, BNSF access is limited to UP’s 12-hour operating window; and
 - 3. UP and KCS have long-standing cost-sharing agreements that govern compensation paid by each party for each other’s movements on the Rosebluff Lead, under which BNSF’s cars are counted as UP movements.
- c. The basis for the identified statement is fully set forth in Mr. Baranowski’s Verified Statement and supporting work papers.

Discovery Request No. 2. *Page 15 of Mr. Baranowski’s Verified Statement states “Further, under BNSF’s granted access to Rosebluff Lead, it is effectively subletting UP’s property rights and therefore do not impact the exercise of KCS’s property rights. In other words, looked at from the perspective of the principles of the SSW Compensation methodology, BNSF is not using any of the property rights possessed by KCS under its partial ownership of the trackage, and accordingly, KCS is due no interest rental compensation.”*

- a. *Define property rights as used by Mr. Baranowski.*
- b. *Identify and explain what constitutes UP’s property rights on the Rosebluff Lead and the basis/support for such conclusion.*
- c. *Identify and explain what constitutes KCS’s property rights on the Rosebluff Lead and the basis/support for such conclusion.*
- d. *Provide any and all support for the statement that “..BNSF’s granted access to Rosebluff Lead, it is effectively subletting UP’s property rights and therefore do not impact the exercise of KCS’s property rights.”*
- e. *Provide any and all support for the statement that “..from the perspective of the principles of the SSW Compensation methodology, BNSF is not using any of the property rights possessed by KCS under its partial ownership of the trackage.”*
- f. *Excluding the reference to the SSW Compensation methodology, does Mr. Baranowski believe as a matter of finance or economics that “BNSF is not*

using any of the property rights possessed by KCS under its partial ownership of the trackage.” Provide any and all support for the statement.

- g. Identify all STB cases known to Mr. Baranowski as relating in any way to one railroad “effectively subletting” another railroad’s property rights involving three railroads or more.*

BNSF Response:

- a. Property rights, as used by Mr. Baranowski, mean ownership rights.
- b. In this context, UP property rights mean UP’s one-half ownership share in the Rosebluff Lead.
- c. In this context, KCS property rights mean KCS’s one-half ownership share in the Rosebluff Lead.
- d. The basis for the identified statement is fully set forth in Mr. Baranowski’s Verified Statement and supporting work papers.
- e. The basis for the identified statement is fully set forth in Mr. Baranowski’s Verified Statement and supporting work papers.
- f. Mr. Baranowski did not consider this issue outside of the context of the principles of the *SSW Compensation* methodology. Moreover, it is not clear what “as a matter of finance or economics” means.
- g. Mr. Baranowski is unaware of any STB cases relating to such circumstances.

Discovery Request No. 3. *Page 15 of Mr. Baranowski’s Verified Statement states “BNSF is not using any of the property rights possessed by KCS under its partial ownership of the trackage, and accordingly KCS is due no interest rental compensation.”*

- a. Provide any and all economic, finance, or other academic treatises to support the denial of any compensation of the interest rental component (i.e. compensation related to the capital cost of construction of the property/infrastructure) to one of the co-owners of a jointly owned asset.*
- b. Provide any and all examples of the STB, other regulators, or courts denying compensation of the interest rental component (i.e. compensation related to the capital cost of construction of the property/infrastructure) to one of the co-owners of a jointly owned asset.*

BNSF Response:

- a. Mr. Baranowski is unaware of any such economic, finance, or other academic treatises.
- b. Mr. Baranowski is unaware of any such examples.

Discovery Request No. 4. *Page 18 of Mr. Baranowski’s Verified Statement states “Based on my review of the available information and consideration of the*

assets at issue, I have concluded that an RCNLD approach is the most appropriate methodology for determining the value of the Rosebluff Lead”

- a. Identify and produce all documents that were included in Mr. Baranowski’s “review of the available information.”*
- b. Identify and explain every such item /issue contemplated as “consideration of the assets at issue.”*
- c. Explain all work completed by Mr. Baranowski (or anyone under his direction) to evaluate the appropriate valuation approach and provide such analysis.*

BNSF Response:

- a. Mr. Baranowski’s review is based on the record of this case.
- b. As explained in Mr. Baranowski’s Verified Statement at 18-19, Mr. Baranowski considered all items and issues in the record of this case with respect to the Rosebluff Lead assets.
- c. Mr. Baranowski analyzed the record of this case and decided, based upon his expert opinion, that RCNLD was the most appropriate approach. All relevant work and analyses are set forth in Mr. Baranowski’s Verified Statement and work papers.

Discovery Request No. 5. *Page 18 of Mr. Baranowski’s Verified Statement states “The STB/ICC has recognized Capitalized Earnings (CE), Reproduction Cost New Less Depreciation (RCNLD), stand-alone costs, and comparable line sales as valid methodologies.”*

- a. Identify all known examples of STB cases that use comparable line sales.*
- b. Explain all factors considered and work related to comparable line sales valuation methodology for the Rosebluff lead.*
- c. Did Mr. Baranowski (or anyone under his direction) conduct any other analysis with respect to stand-alone cost, capitalized earnings, comparable line sales, market, or other approaches to calculating the value of the Rosebluff Lead assets or direct access rate for BNSF’s use? If so, please provide those analyses.*
- d. Did Mr. Baranowski (or anyone under his direction) conduct any other analyses of potential or actual business customers or opportunities for BNSF with customers Rosebluff Lead with or without direct access to such customers? If so, please provide those analyses.*

BNSF Response:

- a. Mr. Baranowski is unaware of any such STB cases.

- b. All relevant factors considered and work are set forth in Mr. Baranowski's Verified Statement and work papers.
- c. Mr. Baranowski conducted no such non-privileged analyses.
- d. No.

Discovery Request No. 6. *Page 18 and 19 of Mr. Baranowski's Verified Statement states "I have rejected the use of the CE approach in this case for several reasons. First, it is unclear how to incorporate BNSF's earnings generated from its existing traffic in reciprocal switch service into part of a capitalized earnings valuation, which in turn would be used to develop fees affecting BNSF's earnings generated under prospective direct service access. This concern is related to the issue of earnings circularity that has led the ICC/STB to conclude that the CE approach was not suitable in certain past SSW Compensation proceedings. Second, in the context of joint ownership, it is unclear how the earnings UP or BNSF generates should influence, if at all, the earnings valuation that would be the basis for compensation to KCS. Third, there are significant challenges with allocating the appropriate level of revenues to assets in terminal areas that are both used as part of switching operations and overhead trackage rights movements.*

- a. *For the following statement, explain each and every "concern" and whether and how each concern would impact that rate "...[E]arnings circularity that has led the ICC/STB to conclude that the CE approach was not suitable in certain past SSW Compensation proceedings." Provide all supporting documents.*
- b. *Provide any and all support for the following statement. "Second, in the context of joint ownership, it is unclear how the earnings UP or BNSF generates should influence, if at all, the earnings valuation that would be the basis for compensation to KCS."*
- c. *Explain and provide support for any and all factors in which UP earnings would or would not influence earnings valuation of the jointly owned Rosebluff Lead asset.*
- d. *For the following statement, explain each and every "challenge" that applies. "Third, there are significant challenges with allocating the appropriate level of revenues to assets in terminal areas that are both used as part of switching operations and overhead trackage rights movements."*

BNSF Response: BNSF intends to respond to the Capitalized Earnings ("CE") valuation proposed by Dr. Neels in the BNSF Reply. Therefore, BNSF objects to this discovery request on the ground that it is premature in that it seeks information that will be included in BNSF's future submissions, which are not yet due. BNSF will produce any such evidence relied upon at the appropriate time. Without waiving this objection, all relevant support for these statements are set forth in Mr. Baranowski's Verified Statement and work papers.

Discovery Request No. 7. *With respect to Mr. Baranowski's Verified Statement on page 25 "Table 6: Summary of Rosebluff Lead Valuation",*

- a. *Confirm that the "Physical Depreciation" value of {\$15,726,978} is based on physical depreciation of 59%, as shown in your workpaper "Compensation Calculations.xlsx," tab "Fees."*
- b. *If Mr. Baranowski were calculating the replacement costs for a new entrant with a "Reproduction Cost New" of {\$26,827,939}, confirm that the "Physical Depreciation" value in the first year of operation would be \$0 based on physical depreciation of 0%. Explain.*

BNSF Response:

- a. Confirmed.
- b. BNSF cannot confirm that "the 'Physical Depreciation' value in the first year of operation would be \$0 based on physical depreciation of 0%," as outlined in this request. In the proposed hypothetical, physical depreciation would occur during the first year of operation.

Discovery Request No. 8. *Regarding the phrase "current productive value of an asset" which is used from time to time in discussions of market value, answer the following questions:*

- a. *Indicate whether you have an understanding of the phrase and if so explain that understanding.*
- b. *Does reducing the "Reproduction Cost New" by "Physical Depreciation" in Table 6 ignore the current productive value of the Rosebluff Subject Assets?*
- c. *Indicate whether the RCNLD you calculate with respect to the Rosebluff Lead is consistent with your understanding of the phrase "current productive value of an asset."*
- d. *Identify any case that you worked on (that you provided evidence or you supported evidence by another witness) that took a position or calculated a rate based on the viewpoint that required the current productive value of an asset is appropriate.*
- e. *For each example identified in the answer to the prior question, indicate why such current productive value does not apply or otherwise is distinguished from the Rosebluff lead?*
- f. *Do you agree that the current productive value of an asset is reflected in a competitive market price?*

BNSF Response:

- a. Mr. Baranowski does not use the term “current productive value of an asset” in his Verified Statement, but he understands this to be the value of an asset based on its remaining life.
- b. No.
- c. Yes.
- d. Mr. Baranowski’s experience is set forth in his resume. *See, e.g.*, BNSF Opening Statement and Evidence (BNSF-144), Baranowski V.S. at Exhibit A. Separately, a list of all of Mr. Baranowski’s STB testimony is being provided with these responses (Attachment A).
- e. BNSF objects to this discovery request on the grounds that it is unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
- f. No.

Discovery Request No. 9. *Identify the cases before the STB or other venues that Mr. Baranowski provided evidence and in which Mr. Baranowski proposed RCNLD as an approach for evaluating the reasonableness of a rate.*

BNSF Response: BNSF objects to this discovery request on the grounds that it is unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, to the best of Mr. Baranowski’s knowledge, there are no cases before the STB or other venues that Mr. Baranowski provided evidence and in which Mr. Baranowski proposed RCNLD as an approach for evaluating the reasonableness of a rate.

Discovery Request No. 10. *Identify the cases before the STB or other venues that Mr. Baranowski provided evidence and in which Mr. Baranowski rejected RCNLD as an approach for evaluating the reasonableness of a rate.*

BNSF Response: BNSF objects to this discovery request on the grounds that it is unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, to the best of Mr. Baranowski’s knowledge, there are no cases before the STB or other venues that Mr. Baranowski provided evidence and in which Mr. Baranowski rejected RCNLD as an approach for evaluating the reasonableness of a rate.

Discovery Request No. 11. *Identify any case before the STB that Mr. Baranowski provided evidence and in which Mr. Baranowski did not assume a new entrant as an approach for evaluating the reasonableness of a rate.*

BNSF Response: BNSF objects to this request on the ground that it is vague, unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, BNSF is including a list of all of Mr. Baranowski's testimony before the STB.

Discovery Request No. 12. *Identify any case outside of the STB that Mr. Baranowski provided evidence and in which Mr. Baranowski assumed a new entrant as an approach for evaluating the reasonableness of a rate.*

BNSF Response: BNSF objects to this request on the ground that it is vague, unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, Mr. Baranowski provided such evidence in FERC Docket Nos. OR18-7-002, et al.

Discovery Request No. 13. *Identify any case before the STB that Mr. Baranowski worked on (that Mr. Baranowski provided evidence or Mr. Baranowski supported evidence by another witness) that took a position in support of reliance on commercially negotiated or market-based reciprocal switching rates (i.e. not calculated by an expert witness and subject to an STB approval).*

BNSF Response: BNSF objects to this request on the ground that it is vague, unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, BNSF is including a list of all of Mr. Baranowski's testimony before the STB.

Discovery Request No. 14. *Because of difficulties associated with calculating non-routine maintenance costs, Mr. Baranowski in calculating non-routine maintenance costs appears to divide replacement costs for different types of assets by their useful lives in years.*

- a. *Please confirm that KCS's understanding in Discovery Request No. 14 is correct.*
- b. *Please explain how Mr. Baranowski treats routine and non-routine maintenance costs differently and why in calculating SSW-based calculations.*
- c. *Provide any Documents, Studies, analyses and reports, or other information related to Discovery Request No. 14.*

BNSF Response:

- a. Confirmed.
- b. The basis for the identified statement is fully set forth in Mr. Baranowski's Verified Statement and supporting work papers. See Baranowski opening workpapers "Compensation Calculations.xlsx", tab "Maintenance" and "Historical Maintenance Expenses.xlsx".
- c. The basis for the identified statement is fully set forth in Mr. Baranowski's Verified Statement and supporting work papers.

Discovery Request No. 15. *Provide a complete and accurate copy of the "UP/BNSF 50/50 Line Agreement" referred to in BNSF's Opening Statement and Evidence (BNSF-144), including all amendments thereto.*

BNSF Response: BNSF will provide a copy of the "UP/BNSF 50/50 Line Agreement" as well as all amendments thereto.

Discovery Request No. 16 *On page 49 of Brent Pitts' Appraisal Report contained in Exhibit C Brent Pitts VS, Mr. Pitts discusses two possibilities for the highest and best use of the subject land:*

"The first involves liquidation of the land assuming it would be subdivided into smaller parcels and sold to abutting owners on an as-is-where-is basis for an expansion of existing abutting uses. The second is for its intact use as a corridor for rail, utilities, pipelines, transportation, and/or communications purposes."

- a. *Please confirm that it in Mr. Pitts opinion the highest and best use of the subject land is as a rail corridor. If not confirmed, please confirm what Mr. Pitts believes is the highest and best use of the subject corridor.*
- b. *Please describe how Mr. Pitts' analysis and conclusions would differ if his opinion was that the highest and best use of the subject land involved liquidation, the first possibility mentioned on page 49 of his Appraisal Report.*
- c. *Provide any Documents, Studies, analyses and reports, or other information related to Discovery Request No. 16.*

BNSF Response:

- a. BNSF objects to this request on the ground that it is vague, unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, BNSF refers KCS to Mr. Pitts' Verified Statement at page 40-1.

- b. BNSF objects to this request on the ground that it is vague, unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BNSF also objects to this request on the ground that it would require BNSF to undertake a special study.
- c. BNSF objects to this request on the ground that it is vague, unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, any such relevant information is set forth in Mr. Pitts' Verified Statement or discovery materials produced by KCS or UP in this proceeding.

Discovery Request No. 17. *On page 49 of Brent Pitts' Appraisal Report contained in Exhibit C Brent Pitts VS, Mr. Pitts mentions nine areas in which significant costs are saved as a result of a buyer or developer being able to purchase a corridor intact:*

1. *Dealing with a single owner*
2. *Savings in appraisal and legal costs*
3. *Corridor with clearly defined locations*
4. *Elimination of delays as corridor is already in place*
5. *Avoidance of need for negotiations with public authorities for utility relocation or construction in easement areas*
6. *Disruption avoidance through established residential neighborhoods and business areas*
7. *Avoidance of the cost and disruption of temporary construction easement acquisitions*
8. *Avoidance of premium acquisition cost to avoid litigation and/or severance damages associated with acquiring corridors*
9. *Site clearance has largely been completed relative to the construction of a new corridor*
 - a. *Please describe how Mr. Pitts in preparing the aforementioned Appraisal Report accounted for each of these categories of cost savings. If Mr. Pitts has not taken one or more or all of these categories of cost savings into account, please confirm which cost savings categories have not been accounted for in his Appraisal Report.*
 - b. *Provide any Documents, Studies, analyses and reports, or other information related to Discovery Request No. 17.*

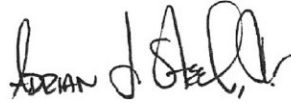
BNSF Response: BNSF objects to this request on the ground that it is vague, unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Discovery Request No. 18. *Please describe in general terms how Mr. Pitts approach and conclusions would have changed if instead of being asked to value the Rosebluff Lead Land Owned by UP/KCS and connecting trackage, he was asked to value a tract of land consisting of the portion of the subject property south of the tract containing or abutting the Zone 1/Zone 2 boundary. For purposes of this question assume that the portion of the subject property north of the Zone1/Zone 2 boundary had been subdivided into smaller parcels and sold to abutting owners on an as-is-where-is basis for an expansion of existing abutting uses be subdivided into smaller parcels and sold to abutting owners on an as-is-where-is basis for an expansion of existing abutting uses.*

- a. Provide any Documents, Studies, analyses and reports, or other information related to Discovery Request No. 18.*

BNSF Response: BNSF objects to this request on the ground that it is vague, unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,



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Dated: March 8, 2021

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

ATTACHMENT A

List of Michael R. Baranowski's Testimony

Michael R. Baranowski ICC and STB Testimony

Interstate Commerce Commission

- March 9, 1995 Finance Docket No. 32467. National Railroad Passenger Corporation and Consolidated Rail Corporation -- Application Under Section 402(a) of the Rail Passenger Service Act for an Order Fixing Just Compensation.
- October 30, 1995 Docket No. 41185. Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company.

Surface Transportation Board

- July 11, 1997 Docket No. 41989. Potomac Electric Power Company v. CSX Transportation, Inc. Reply Statement and Evidence of Defendant CSX Transportation, Inc.
- August 14, 2000 Docket No. 42051. Wisconsin Power and Light Company v. Union Pacific Railroad Company, Reply Verified Statement of Christopher D. Kent and Michael R. Baranowski.
- September 20, 2002 Docket No. 42070. Duke Energy Corporation v. CSX Transportation, Inc., Reply Evidence and Argument of CSX Transportation, Inc.
- September 30, 2002 Docket No. 42069. Duke Energy Corporation v. Norfolk Southern Railway Company, Reply Evidence and Argument of Norfolk Southern Railway Company.
- October 11, 2002 Docket No. 42072. Carolina Power & Light v. Norfolk Southern Railway Company, Reply Evidence and Argument of Norfolk Southern Railway Company.
- November 12, 2002 Docket No. 42070 Duke Energy Corporation v. CSX Transportation, Rebuttal Evidence and Argument of CSX Transportation
- November 19, 2002 Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Rebuttal Evidence and Argument of Norfolk Southern Railway Company
- November 27, 2002 Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Rebuttal Evidence and Argument of Norfolk Southern Railway Company
- January 10, 2003 Docket No. 41185. Arizona Public Service Co. And PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company, Petition of the Burlington Northern and Santa Fe Railway Company to Reopen and Vacate Rate Prescription.
- February 19, 2003 Docket No. 42077, Arizona Public Service Co. And PacifiCorp v. The Burlington Northern and Santa Fe Railway Company, and STB Docket No. 41185, Arizona Public Service Co. And PacifiCorp v. The Burlington Northern and Santa Fe Railway Company, Reply of the Burlington Northern Santa Fe Railway Company in Opposition to Petition for Consolidation.
- April 4, 2003 Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
- October 8, 2003 Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence of The Burlington Northern and Santa Fe Railway Company

October 24, 2003	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Supplemental Evidence of Norfolk Southern Railway Company
October 31, 2003	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Reply of Norfolk Southern Railway Company to Duke Energy Company's Supplemental Evidence
November 24, 2003	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Supplemental Evidence of Norfolk Southern Railway Company
December 2, 2003	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Reply of Norfolk Southern Railway Company to Carolina Power & Light Company's Supplemental Evidence
December 12, 2003	Docket No. 42069 Reply of Norfolk Southern Railway Company to Duke Energy Corporation's Petition to Correct Technical Error and Affidavit of Michael R. Baranowski
January 5, 2004	Docket No. 42070 Duke Energy Corporation v. CSX Transportation, Inc., Supplemental Evidence of CSX Transportation, Inc.
January 26, 2004	Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, Joint Supplemental Reply Evidence and Argument of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company
March 22, 2004	Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Supplemental Reply Evidence of The Burlington Northern and Santa Fe Railway Company
April 9, 2004	Docket No. 41185 Arizona Public Service Company and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company, The Burlington Northern and Santa Fe Railway Company's Reply Evidence on Reopening
May 24, 2004	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence of The Burlington Northern and Santa Fe Railway Company
June 23, 2004	Docket No. 42057 Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Petition to Correct Technical and Computational Errors
March 1, 2005	Docket No. 42071 Otter Tail Power Company v BNSF Railway Company, Supplemental Evidence of BNSF Railway Company
April 4, 2005	Docket No. 42071 Otter Tail Power Company v BNSF Railway Company, Reply of BNSF Railway Company to Supplemental Evidence
July 20, 2005	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Evidence of BNSF Railway Company
May 1, 2006	Docket No. Ex Parte 657 (Sub-No. 1) Major Issues in Rail Rate Cases, Verified Statement Supporting Comments of BNSF Railway Company
May 31, 2006	Ex Parte 657 (Sub-No. 1) Major Issues in Rail Rate Cases; Verified Statement Supporting Reply Comments of BNSF Railway Company

June 15, 2006	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Supplemental Evidence of BNSF Railway Company
June 15, 2006	Docket No. 41191 (Sub 1) AEP Texas North Company v. BNSF Railway Company, Reply Supplemental Evidence of BNSF Railway Company
June 30, 2006	Docket No. Ex Parte 657 (Sub-No. 1) Major Issues in Rail Rate Cases; Verified Statement Supporting Rebuttal Comments of BNSF Railway Company
February 4, 2008	Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSX Transportation, Inc.
February 4, 2008	Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSX Transportation, Inc.
February 4, 2008	Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSX Transportation, Inc.
May 1, 2008	Docket No. Ex Parte 679 Petition of the AAR to Institute a Rulemaking Proceeding to Adopt a Replacement Cost Methodology to Determine Railroad Revenue Adequacy, Verified Statement of Michael R. Baranowski
July 14, 2008	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Third Supplemental Reply Evidence of BNSF Railway Company
July 14, 2008	Docket No. AB-515 (Sub-No. 2) Central Oregon & Pacific Railroad, Inc. -- Abandonment and Discontinuance of Service -- in Coos, Douglas, and Lane Counties, Oregon (Coos Bay Rail Line)
August 8, 2008	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Fourth Supplemental Evidence of BNSF Railway Company
August 11, 2008	Docket No. 42014 Entergy Arkansas, Inc. and Entergy Services, Inc. v Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc.; Finance Docket No. 32187 Missouri & Northern Arkansas Railroad Company, Inc. – Lease, Acquisition and Operations Exemption – Missouri Pacific Railroad Company and Burlington Northern Railroad Company, Reply Evidence and Argument of Union Pacific
September 5, 2008	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Fourth Supplemental Reply Evidence of BNSF Railway Company
September 12, 2008	Docket No. AB-515 (Sub-No. 2) Central Oregon & Pacific Railroad, Inc. -- Abandonment and Discontinuance of Service -- in Coos, Douglas, and Lane Counties, Oregon (Coos Bay Rail Line); Rebuttal to Protests
August 24, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Opening Evidence of Union Pacific Railroad Company
October 22, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Rebuttal Evidence of Union Pacific Railroad Company
January 19, 2010	Docket No. 42110 Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.

May 7, 2010	Docket No. 42113 Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company, Joint Reply Evidence of BNSF Railway Company and Union Pacific Railroad Company
November 22, 2010	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, BNSF Comments on Remand, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
January 6, 2011	Docket No. 42056 Texas Municipal Power Agency v. BNSF Railway Company, BNSF Reply to TMPA Petition for Enforcement of Decision, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
October 28, 2011	Docket No. FD 35506 Western Coal Traffic League - Petition for Declaratory Order, Opening Evidence of BNSF Railway Company, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
November 10, 2011	Docket No. 42127 Intermountain Power Agency v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
November 28, 2011	Docket No. FD 35506 Western Coal Traffic League - Petition for Declaratory Order, Reply Evidence of BNSF Railway Company, Joint Reply Verified Statement of Michael R. Baranowski and Benton V. Fisher
May 10, 2012	Docket No. 42056 Texas Municipal Power Agency v. BNSF Railway Company, BNSF Reply to TMPA Petition to Reopen and Modify Rate Prescription, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
November 30, 2012	Docket No. 42125 E.I. DuPont De Nemours & Company v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company
December 7, 2012	Docket No. Ex Parte 715, Rate Regulation Reforms, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski
January 7, 2013	Docket No. 42130 SunBelt Chlor Alkali Partnership v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company
March 1, 2013	Ex Parte No. 711 Petition for Rulemaking to Adopt Revised Competitive Switching Rules, Opening Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Richard W. Brown
April 12, 2013	Docket No. 42136 Intermountain Power Agency v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
April 30, 2013	Ex Parte No. 711 Petition for Rulemaking to Adopt Revised Competitive Switching Rules, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Richard W. Brown

June 20, 2013	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
September 5, 2013	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
July 21, 2014	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
September 5, 2014	Ex Parte No. 722 Railroad Revenue Adequacy, Opening Comments of Norfolk Southern Railway Company, Verified Statement of Michael R. Baranowski
November 4, 2014	Ex Parte No. 722 Railroad Revenue Adequacy, Reply Comments of Norfolk Southern Railway Company, Verified Statement of Michael R. Baranowski
September 4, 2015	Docket No. FD 35743 Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) - Canadian National Railway Company, Opening Evidence of Illinois Central Railroad Company and Grand Trunk Western Railroad, Joint Verified Statement of Michael Baranowski and Benton Fisher
October 7, 2015	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Supplemental and Compliance Evidence of CSX Transportation, Inc.
October 23, 2015	Docket No. FD 33760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal Statement, Verified Statement of Michael R. Baranowski
November 20, 2015	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply to Supplemental and Compliance Evidence
March 7, 2016	Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
July 18, 2016	Docket No. FD 35842 New England Central Railroad, Inc. -- Trackage Rights Order -- Pan Am Southern LLC, Pan Am Southern Reply Evidence, Verified Statement of Michael R. Baranowski
July 26, 2016	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
August 26, 2016	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher

October 11, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Comment of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
October 26, 2016	Ex Parte No. 711 (Sub-No. 1) Reciprocal Switching, Opening Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski
November 7, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
March 6, 2017	Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Supplemental Reply Evidence of CSX Transportation, Inc.
January 12, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Petition to Establish Conditions of Use and Compensation, Verified Statement of Michael R. Baranowski
July 16, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal, Verified Statement of Michael R. Baranowski
April 26, 2019	Docket No. 42144 North American Freight Car Association, et al v. Union Pacific Railroad Company, Verified Statement of Michael R. Baranowski
January 26, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Opening Statement on Compensation, Verified Statement of Michael R. Baranowski

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of March, 2021, copies of the foregoing Responses and Objections of BNSF to KCS's Discovery Requests Related to BNSF's Opening Statement and Evidence on Compensation have been served by e-mail on counsel for Union Pacific Railroad Company, Kansas City Southern Railway Company and LyondellBasell Industries.

A handwritten signature in black ink, appearing to read 'Peter W. Denton', is written over a solid horizontal line.

Peter W. Denton

**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**

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

Exhibit E

REPLY VERIFIED STATEMENT OF JULIUS PAUL MAURIN IV, ESQ., RLS

**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**

**KCS’S REPLY STATEMENT AND EVIDENCE ON COMPENSATION CONCERNING
BNSF’S USE OF THE ROSEBLUFF LEAD**

**VERIFIED STATEMENT OF
JULIUS PAUL MAURIN IV, ESQ., RLS**

My name is J. Paul Maurin IV. I have been involved in real estate cases (condemnation and transactional) as an attorney for 18 years. I have practiced land surveying for 28 years (14 years as a licensed surveyor). Currently, I am the Real Estate Field Services Manager for The Kansas City Southern Railway Company (“KCS”). My resume is attached as Exhibit 1.

During my professional career, I have researched, analyzed, and presented at seminars on real estate issues involving the interpretation of real estate documents. I have prepared this verified statement to assist the Board in determining the compensation due to KCS for BNSF Railway Company’s (“BNSF”), direct access over the Rosebluff Lead and Rosebluff Yard (herein referred to as the “Property”).¹

¹ This verified statement adopts the various short citations and abbreviations that have previously been used throughout this proceeding.

I. Description of the Property

The Rosebluff Lead is a KCS and UP jointly-owned single-track line that begins at the former SP Lafayette Subdivision between Dawes, Tex., and Avondale, La., at MP 222.3. The Rosebluff Lead extends nine miles to the south. See Decision No. 3 at 1. The Rosebluff Lead runs through Rosebluff Yard, which is located at the northern end of the Rosebluff Lead. Id., at 1-2. Rosebluff Yard consists of five yard tracks and one “running track”.² Id., at 2. The Property that is the subject of the above-captioned proceeding includes both the Rosebluff Lead and the Rosebluff Yard.

Since 1981, KCS and UP (or UP’s predecessor SP) have, **as a matter of convenience**, divided their operations – not ownership - on the Lead into two customer zones, Zone 1 and Zone 2.³ See Decision No. 3 at 2. Zone 1 customers are generally located north and east of the Yard or near the south end of the Yard, while Zone 2 customers are located a mile or more south of the Yard. Today, KCS switches customers in Zone 1, and UP switches customers in Zone 2. UP and KCS, each of which operates its own yard off its own nearby mainline track, both use Rosebluff Yard to exchange cars destined to or originating from the other carrier’s zone.

² UP and KCS share Rosebluff Yard in separate 12-hour operating windows. UP’s window in the Yard is scheduled to be from 6:00 am to 6:00 pm, and KCS’s window is scheduled to be from 6:00 pm to 6:00 am. The 12-hour window the parties established for convenience does not apply to the Rosebluff Lead.

³ KCS and UP operate the Rosebluff Lead consistent with the terms of a 1948 joint facility agreement (“Joint Facility Agreement”) between KCS and UP’s predecessor (T&NO) as revised in 1981 and 1999. Originally, the 1948 operating agreement divided the operational responsibility for the tracks into two-year blocks – KCS served for 2 years, then T&NO would serve for 2 years. The 1981 agreement, noting that the Lead had been “deeded to The Kansas City Southern Railway Company and the said Texas and New Orleans Railroad Company” (pages 1-2) divided the operational responsibility a different way, into zones. Originally the companies alternated which served what zone, but shippers complained, so in 1999 they agreed to a pause in alternating zones. But at no time did the companies divide the ownership. Indeed, Article I, A. to the Joint Facilities Agreement refers to “the jointly-owned track acquired by deed of May 21, 1947”.

Irrespective of the zones, per Article I.E. of the Joint Facility Agreement, either carrier may operate a “solid over-the-road unit train” into the zone operated by the other. Also, Section 19 of the Joint Facility Agreement recognizes that the “parties agree[d] neither shall sell, lease or transfer its interest in the jointly owned tracks, or any part thereof, without advance written approval by the other party.” *Id.*

II. The Conveyance Confirms KCS and UP Have an Undivided Joint Interest in the Property.

On May 21, 1947, the Reconstruction Finance Corporation and The United States of America conveyed the Property to The Texas and New Orleans Railroad Company (“T&NO”)⁴ **and** The Kansas City Southern Railway Company via deed (hereinafter the “Conveyance”).⁵ The Conveyance unequivocally states that the Conveyance’s intention was to deed the Property to the Purchasers jointly. *Id.*, at 1, 13. The Conveyance clearly states that T&NO and KCS would be referred to jointly as “Purchaser” and refers to them with the pronoun “their.” Furthermore, the resolutions adopted by T&NO and KCS and attached to the Conveyance state that they confirm or complete the purchase:

⁴ In 1961, the T&NO merged into SP, and the T&NO ceased to exist as a separate entity. See *S. Pac. Co.—Merger—Tex. & New Orleans R.R.*, 312 I.C.C. 598, 600-01 (1961). Thus, SP was T&NO’s successor to the joint facility agreements and co-owner of the Rosebluff Lead with KCS from 1961 until the UP/SP merger.

⁵ The 1947 Conveyance for the property confirms that the government conveyed the Property to The Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company “jointly hereinafter called “Purchaser” (page 1) and that “th[e] conveyance transfers and assigns to the Purchaser any and all transferrable rights, franchises, licenses and permits which the Vendor may have obtained... The above-described property, rights of way, servitudes, and easements are conveyed to the Purchaser...” (page 12) and “TO HAVE AND TO HOLD: The said property unto the said Purchaser and the Purchaser’s successors and assigns forever,” (page 13), using the single term Purchaser, representing both T&NO and KCS, as the grantee. See Exhibit B.

“for the price and sum of Two Hundred Fifty Thousand and no/100 (\$250,000.00) Dollars cash, to be paid jointly....in the proportions of one-half each.”

Based on my experience in researching, analyzing, and interpreting real estate documents, I am certain that the Conveyance deeded the Property to T&NO and KCS **jointly**.

III. The Louisiana Civil Code Confirms KCS and UP Have An Undivided Interest in the Property.

Under Louisiana law, the Louisiana Civil Code should be utilized to resolve conveyance interpretation issues. BNSF’s argument that UP and KCS have divided their undivided interest into two distinct and separate interests solely because the parties chose for administrative convenience to establish zones and operating windows for the Rosebluff Yard is irreconcilable with the real property laws of the State of Louisiana.

The Louisiana Civil Code provides that two or more persons may own the same real property in “indivision”⁶, each having an undivided share. *See La. Civ. Code. art. 480. In the absence of other provisions of law or juridical act*, the shares of all co-owners are presumed to be equal. *See La. Civ. Code art. 797*. Co-owners share the fruits and products of the thing held in indivision in proportion to their ownership. (“Fruits” under the Civil Code includes any revenue derived from the property jointly owned). When fruits or products are produced by a co-owner,

⁶ See “indivision”: “a state of undivided wholeness: state of being owned by two or more co-owners each having an undivided interest in the property as a whole. <https://www.merriam-webster.com/legal/indivision>. Also, “**indivision** (1875) *Civil law*. Undivided ownership of property; the condition of being owned by co-owners each having an undivided interest in the property.” Black’s Law Dictionary, 11th Ed. (2019). See also *Steel v. Denning*, 456 So.2d. 992, 997 (1984):

It is well settled that property may be held in indivision, that is, it may be owned jointly by more than one person, with no single person owning any particular part of the property, rather, each owning an interest in the whole. As early recognized by this Court, co-owners of land “are owners par mi et par tout, of part and of the whole. Neither of two co-owners has the exclusive right to any determinate part of the common property,” citing *Gulf Refining Co. v. Carroll*, 145 La. 299, 82 So. 277 (1919).

other co-owners are entitled to their shares of the fruits or products after deduction of the costs of production. *See La. Civ. Code. art. 798*. Louisiana courts consistently permit a co-owner to recover the fruits from the property obtained from another co-owner. *See, e.g., Ellwood Oil Co. v. Anderson*, 26,907 (La. App. 2 Cir. 05/10/95), 655 So. 2d 694, 698 (finding a right of action against a co-owner to recover his share of fruits of the property held in indivision); *Milton v. Milton*, 2010-1589 (La. App. 1 Cir. 05/09/11), 71 So. 2d 326, 334-35 (applying a one-half undivided interest in the revenues from a dairy farm between co-owners).

Under La. Civ. Code art. 807, parties who do not want to continue to hold property in indivision may seek partition. UP and KCS have not done so, and continue to hold the Rosebluff Lead in indivision. Accordingly, under Louisiana law, KCS is entitled to be compensated for BNSF providing direct access over the Rosebluff Yard and through the Rosebluff Lead regardless of whether BNSF's service occurs during UP or KCS's window.

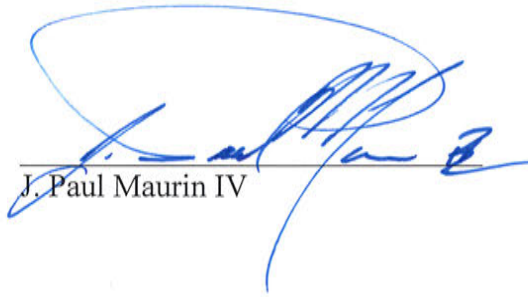
Conclusion

Collectively, the Conveyance speaks for itself, but to the extent there is any ambiguity, the Louisiana Code and the two Joint Facility Operating Agreements all clearly demonstrate that there has never been a division of KCS and UP's undivided ownership for legal or any other purpose. From the time of the Conveyance and continued to the present, KCS and UP have at all times owned the Property jointly, as co-owners, and in indivision.

VERIFICATION

I, J. Paul Maurin IV, declare under penalty of perjury that I have read the foregoing Verified Statement, that I know the facts asserted therein, and that the same is true as stated. Further, I certify that I am qualified to and authorized to submit this Verified Statement on behalf of The Kansas City Southern Railway Company.

Executed on this 12th day of April 2021.



J. Paul Maurin IV

Exhibit 1: Biography of J. Paul Maurin IV

J. Paul Maurin IV

14502 Hemlock Street, Overland Park, Kansas 66223

816.983.1123 • pmaurin@kcsouthern.com

Licensed Attorney and Land Surveyor in Kansas & Missouri

Licensed UAS Remote Pilot

WORK EXPERIENCE

The Kansas City Southern Railway Company Present)

Kansas City, Missouri (2018 –

REAL ESTATE FIELD SERVICES MANAGER

- Manage like-kind exchanges and acquisitions for railway sidings, railyards, and right-of-way expansions.
- Prepare legal descriptions, easements, subordinations, releases, deeds, leases, and purchase and option contracts.
- Advise legal counsel and internal departments on real estate issues including adverse possession and condemnations.

Kansas City Power & Light Co. 2018)

Kansas City, Missouri (2006 –

REAL ESTATE SPECIALIST (2006 – 2018)

- Appeared before city and county commissions to obtain permitting for substations and communication towers.
- Prepared legal descriptions, easements, subordinations, releases, deeds, leases, and purchase and option contracts.
- Advised legal counsel and internal departments on various real estate matters.
- Served as advisory member of drone SCOUT Team to explore drone technology in surveying and utility industries.

CONTRACT MANAGER (2015 – 2018)

- Oversaw and administered multi-million dollar contracts associated with Midwest Transmission Project.
- Collaborated with inside legal counsel to determine parties' contractual obligations.
- Monitored outside contractor performance and enforced contractual obligations to maximize value to company.

Schmitz, King & Associates, Inc. Rhodes Land Surveyors, Inc. 2004)

Olathe, Kansas (2005 – 2006)

Kansas City, Kansas (1994 –

CREW CHIEF

- Performed boundary, topographical, ALTA, and flood surveys and supervised field activities of 3-man crew.
- Researched deeds, abstracts, permanent surveys, and plats for boundary, right-of-way, and easement information.

Wallace, Saunders, Austin, Brown & Enoch
2005)

Overland Park, Kansas (2004 –

ASSOCIATE ATTORNEY

- Managed complex workers' compensation and real estate cases and regularly appeared in court.
- Researched and drafted correspondence and court-filed documents including briefs and pleadings.

EDUCATION

Washburn University School of Law; Juris Doctor, 2003 Topeka, Kansas

- Law Clinic (represented low-income clients pursuant to Kansas Supreme Court Rule 709)
- Independent research on Wyandotte Tribal Land Claim

Benedictine College; B.A., Sociology, 1998 Atchison, Kansas

- Varsity NAIA Baseball (1995 - 1998)
- Atchison County Community Corrections (Surveillance Officer Internship)

PUBLICATIONS & PRESENTATIONS

- Presenter, "Railroad Right-of-Way," Salina Seminar Series (Jan. 2016)
- Presenter, "Kansas Minimum Standards for Boundary Surveys," KSLS Annual Meeting (Oct. 2016 & Oct. 2018)
- Co-Author, "Ambiguities in Legal Descriptions," *Section Lines* (May 2011)
- Co-Author, "Kansas Boundary Surveys: Principles of Law," *Section Lines* (Aug. 2011)
- Presenter, "Land Surveyor in the Courtroom," KSLS Annual Meeting (Oct. 2009)

MEMBERSHIPS & COMMUNITY ACTIVITIES

Kansas Bar Association	The Missouri Bar	
Kansas Society of Land Surveyors (Former Board Member)	Missouri Society of Professional Surveyors	of
Lakeview Hunting & Fishing Association (Former Board Member)	Volunteer	Youth
Baseball Coach (2011- Present)		

CERTIFICATE OF SERVICE

I hereby certify that a true copy of KCS's Reply Statement and Evidence on Compensation Concerning BNSF's Use of the Rosebluff Lead was served by first-class mail, postage prepaid, or by a more expeditious manner, this 12th day of April 2021, on counsel for BNSF Railway Company, Union Pacific Railroad Company, and all other parties of record.

/s/ William A. Mullins
William A. Mullins
Attorney for The Kansas City Southern
Railway Company