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303617

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

ENTERED
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January 27, 2022
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CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC
RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD
CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

—CONTROL—

KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY;
GATEWAY EASTERN RAILWAY COMPANY; AND THE TEXAS MEXICAN RAILWAY
COMPANY

UNION PACIFIC RAILROAD COMPANY'S MOTION TO COMPEL

EXPEDITED HANDLING REQUESTED

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-5543

MICHAEL L. ROSENTHAL
PRATIK AGARWAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

January 27, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

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UNION PACIFIC RAILROAD COMPANY’S MOTION TO COMPEL

Union Pacific Railroad Company (UP) moves to compel Kansas City Southern (KCS) and Canadian Pacific Railway (CP) (collectively, Applicants) to respond to three related requests seeking the production of documents from KCS.¹ UP’s requests address an issue that Applicants themselves recognize is critical to this proceeding: Whether the proposed transaction may harm competition by foreclosing customers’ access to interline service that they would prefer to the single-line offerings of the combined CP/KCS. However, Applicants have refused to provide UP with discovery designed to address whether the Board should use its authority under 49 U.S.C. § 11324(c) to prevent such harm by imposing conditions governing the transaction.

When Applicants complained that UP’s requests were too burdensome, UP substantially narrowed the scope of the requests. UP also proposed that Applicants conduct initial electronic searches to evaluate the actual extent of the burden, and UP offered to work with Applicants to

¹ UP redacted certain portions of Exhibit C hereto in an abundance of caution to avoid any claim that it revealed information Applicants consider Highly Confidential. There are no redactions in the body of the motion.

develop appropriate search terms to further reduce any demonstrated burden. Applicants have been uncooperative; although they have produced documents that they claim are an adequate alternative, those documents do not contain the information requested by UP.

I. A CP/KCS transaction will harm competition if the combined CPKC sets rates for interline service that effectively foreclose shippers' alternatives to CPKC.

UP's foreclosure concern is best illustrated with an example: UP and KCSM (KCS's Mexican subsidiary), currently cooperate to move finished automobiles from San Luis Potosi to Chicago. KCSM moves the traffic from San Luis Potosi to the Laredo gateway, which KCSM controls, as it is the only Mexican railroad that serves the gateway; UP moves the traffic from Laredo to Chicago. KCSM and UP separately quote the customer confidential rates for the service each railroad provides. Today, KCSM must cooperate with UP to move the traffic, because KCS lines run only as far north as Kansas City. However, KCS connects with CP in Kansas City. And CP has lines from Kansas City to Chicago. Thus, the post-merger CPKC would not need to work with UP.

In this situation, if CPKC captures the business by offering better rates or service than KCSM and UP could provide by working together, that would be pro-competitive. However, the post-merger CPKC will not have to provide better rates or service to capture the business for which KCSM currently works with UP. Instead, it will have the option of effectively "closing" the Laredo gateway by increasing the rate KCSM quotes for interline service with UP, so that a KCSM-UP option will no longer be a viable alternative for customers, even if the CPKC option costs more, or offers lower quality service, than the KCSM-UP option does today.

Applicants are aware of this issue. In their Application, they promise to keep the Laredo Gateway and other gateways "open" by providing customers "commercially reasonable rates" to

gateways.² They also promise to “work with shippers to find ways to make these commitments more concrete and readily enforceable.”³ However, they plainly intend to resist efforts to have concrete remedies imposed on them. Their Application includes testimony from an economist who purports to analyze KCS’s behavior following a prior transaction in which KCS made a similar promise to charge “commercially reasonable rates.” They present that testimony in an effort to show that such a promise provides sufficient protection from competitive harm.⁴

Applicants’ expert’s analysis is not valid, as UP intends to show in a later submission. But simply addressing Applicants’ expert’s analysis as a theoretical matter may not be sufficient to address the issue. The Board has said, for example, that a party seeking conditions involving more than a promise of “commercially reasonable rates” must “rebut” the presumption that “end-to-end mergers”—combinations of railroads that connect at only a single point—will not affect consumers adversely.⁵

UP therefore propounded document requests designed to examine directly KCS’s rate-setting practices when KCS presently has incentives to foreclose competition—that is, when KCS competes with UP in the United States for traffic originated or terminated by KCSM in Mexico. KCS has refused to perform a reasonable search for this information.

² APP Vol. 1 at 233; Brooks VS ¶ 46.

³ *Id.*

⁴ See APP Vol 2. at 21–24; Majure VS ¶¶ 28–32.

⁵ See, e.g., *Kansas City S.—Control—The Kansas City S. Ry., et al.*, FD 34342, slip op. at 17 (STB served Nov. 29, 2004).

II. Applicants have refused to provide reasonable discovery of relevant information, despite UP's efforts to work with Applicants to mitigate any undue burdens of providing the requested discovery.

Applicants filed their Application on October 29, 2021. On November 8, 2021, UP propounded three discovery requests designed to examine KCS's rate-setting practices in the circumstances described above:⁶

- **Request No. 94:** Produce all documents created since 2004 reflecting communications between KCS and KCSM regarding KCSM rates for traffic to be handled by UP via the Laredo gateway.
- **Request No. 95:** Produce all documents created since 2004 reflecting communications between KCSM and KCS regarding KCS rates for traffic to be handled by UP via the Laredo gateway.
- **Request No. 96:** Produce all documents created since 2004 reflecting communications between KCSM and KCS regarding UP rates for traffic to be handled by UP via the Laredo gateway.

Through these requests, UP sought to obtain internal communications that would reveal KCS and KCSM pricing strategies where KCS competes with UP in the United States for business originated or terminated by KCSM in Mexico.⁷

On November 23, 2021, Applicants responded to the three requests at issue collectively, asserting a variety of objections, but offering to meet and confer “to discuss the narrowing of Requests No. 94, 95, and 96.”⁸

⁶ The relevant requests and responses are attached hereto as Exhibit A.

⁷ UP also tried to address the rate-setting issue in a more summary manner by asking for documents comparing KCS-KCSM single-line rates with KCSM-UP interline rates for traffic moving via the Laredo Gateway. *See* UP Request No. 93. Applicants objected and said they would produce documents “analyzing or discussing the general or average relationship between KCSM-UP rates and KCSM-KCSR rates.” Response to Request No. 93. However, Applicants have since reported that they have *no* non-privileged documents responsive to this request.

⁸ *See* Ex. A.

UP and Applicants met and conferred on December 1, 2021. UP agreed to narrow the time period covered by its requests from documents created since 2004, when KCS acquired control of the Laredo gateway through its acquisition of control of the Texas Mexican Railway Company, to documents created since 2016. UP also agreed that, to accommodate KCS's concerns about burden, UP would identify an initial group of five commodities that would be the subject of searches, and KCS would perform initial searches to develop a better understanding of the burdens involved.⁹

On December 24, 2021, UP identified the initial group of five commodities.¹⁰ On January 5, 2022, UP inquired about the status of discovery, including Applicants' responses to Request Nos. 94 through 96.¹¹ Applicants responded that same day that KCS had "taken [UP's] requests under advisement and conducted preliminary investigations," but had concluded that the request was "still unduly burdensome."¹² They said KCS would "produce internal pricing strategy reports on new and renewed business relating to the requested commodities."¹³ (Ultimately, KCS did not produce any such documents until January 18, and as discussed below, those reports do not contain the type of information UP was seeking through Requests Nos. 94 through 96.)

⁹ A letter reflecting the parties' agreements resulting from the meeting is attached hereto as Exhibit B.

¹⁰ UP's identification of the initial list of commodities can be found on pages 16–17 of Exhibit C. Exhibit C is an email chain containing UP's discovery-related communications with Applicants. Because Applicants frequently responded to UP's questions by inserting responses below the questions, communications from different dates are sometimes contained on the same page.

¹¹ See Exhibit C at 15.

¹² *Id.* at 14.

¹³ *Id.*

UP responded on the evening of January 5, asking whether KCS had actually conducted electronic searches for the requested documents, and offering “to discuss methods of narrowing searches so they return a reasonable number of documents.”¹⁴

On January 9, Applicants responded that “KCS has not completed any email searches as of yet.”¹⁵ They said they doubted they could develop search terms to significantly narrow the number of potentially responsive document, but that KCS was “undertaking an email search for the 2019 time period and for one of [UP’s] five commodities.”¹⁶ On January 10, UP suggested some terms that might be used in a search, but observed that KCS personnel would have better knowledge of the terminology they actually use when quoting rates.¹⁷ UP also suggested Applicants focus any initial test search on plastics, not benzene.¹⁸

On January 18, Applicants said KCS had run a test search, and that the search term “benzene” brought back over 13,000 “hits” for the year 2019.¹⁹ That same day, UP responded that simply running the term “benzene” was insufficient to establish an undue burden.²⁰ UP again suggested that Applicants use additional search terms to reduce the number of “hits.” UP specifically asked Applicants to “use the official terms and other common terms that people in

¹⁴ *Id.* at 12.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See id.* at 8–9.

¹⁸ *See id.* at 8–9.

¹⁹ *See id.* at 9.

²⁰ *See id.* at 5.

the marketing department use to represent when establishing single-line and Rule 11 prices for the same move.”²¹

On January 25, after a month of foot-dragging, Applicants said KCS had run a search of “benzene”—“the narrowest commodity UP asked for”—using the terms that UP had suggested, which returned just 206 documents, none of which were responsive.²² Applicants apparently never ran a search based on terminology actually used by KCS personnel, as UP had actually requested. Applicants also did not reveal the step-by-step results of applying the search terms they used, which might help identify whether a particular term or set of terms inappropriately excluded a large number of potentially relevant documents.

Applicants have suggested that their production of other documents has provided the same type of information UP is seeking through Requests No. 94 through 96.²³ However, the “Pricing Review Board” documents that Applicants produced after weeks of delay do not show any actual prices offered to customers. And when UP asked for the pricing information, Applicants objected to performing a “special study.”²⁴

Finally, on the evening of January 25, Applicants produced a document they say shows “KCS’s pricing policy.”²⁵ UP reviewed the document and has propounded additional discovery requests in an attempt to understand whether the “pricing policy” even purports to preclude the type of anticompetitive conduct at issue. Regardless, a document purporting to set a “policy” is

²¹ *Id.*

²² *Id.* at 1.

²³ *See id.* at 1.

²⁴ *See id.*

²⁵ *See id.*

no substitute for discovery designed to explore whether the policy is being followed. UP's discovery requests are aimed at obtaining exactly that type of information.

Accordingly, UP requests an order compelling Applicants to confer with UP to establish reasonable terms for conducting electronic searches for information responsive to UP Request Nos. 94 through 96 and to conduct such searches within 10 days. At the very least, Applicants should be required to perform electronic searches using the terms that UP suggested for *all* commodities for the period from 2016 through 2019.

Respectfully submitted,

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-5543

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
PRATIK AGARWAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

January 27, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2022, I caused a copy of the foregoing document to be served by email or first-class mail, postage prepaid, on all parties of record on the service list for Finance Docket No. 36500.

/s/ Michael L. Rosenthal

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED, *ET AL.*
– CONTROL –
KANSAS CITY SOUTHERN, *ET AL.*

**KANSAS CITY SOUTHERN AND CANADIAN PACIFIC’S JOINT RESPONSES AND OBJECTIONS
TO UNION PACIFIC RAILROAD COMPANY’S FIRST SET OF DISCOVERY REQUESTS**

Pursuant to 49 C.F.R. Part 1114, Subpart B, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, “Canadian Pacific” or “CP”) and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “KCS”; together with CP, the “Applicants”) hereby respond and object as follows to Union Pacific Railroad Company’s First Set of Discovery Requests to Applicants (the “UP Requests”) served on November 8, 2021 in connection with the above-captioned proceeding.

GENERAL OBJECTIONS

The following General Objections apply to each of the UP Requests and shall have the same force and effect as if set forth in full in response to each individually numbered UP Request.

1. Applicants object to the UP Requests and to each Definition, Instruction and Request contained therein to the extent they purport to impose upon the Applicants burdens

large portion of KCS business, and unduly burdensome and not proportional to the needs of this proceeding.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that KCS will provide non-privileged and non-duplicative documents analyzing or discussing the general or average relationship between KCSM-UP rates and KCSM-KCSR rates that they are able to locate after a reasonable search (to the extent any such documents exist)

Request No. 94:

Produce all documents created since 2004 reflecting communications between KCS and KCSM regarding KCSM rates for traffic to be handled by UP via the Laredo gateway.

Response to Request No. 94:

Because of the overlap in Requests No. 94, 95, and 96, Applicants respond to all of them in this Response, and this Response is applicable to each of those Requests.

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding. Applicants further object to this Request because it seeks documents for a 16-year period, which is facially overbroad and unduly burdensome. Applicants further object to this Request in that it seeks “all” documents reflecting communications between KCS and KSCM regarding UP/KCSM/KSC rates for traffic to be handled by UP via the Laredo gateway, let alone over a 16 year period, as this represents a substantial portion of KCS business. As written, these requests would encompass nearly every communication regarding rates.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants state that KCS is available to meet and confer with UP to discuss the

narrowing of Requests No. 94, 95, and 96, and if appropriate, will conduct reasonable searches for a narrower set of responsive, relevant, non-privileged, and non-duplicative documents.

Request No. 95:

Produce all documents created since 2004 reflecting communications between KCS and KCSM regarding KCS rates for traffic to be handled by UP via the Laredo gateway.

Response to Request No. 95:

See Response to Request No. 94.

Request No. 96:

Produce all documents created since 2004 reflecting communications between KCS and KCSM regarding UP rates for traffic to be handled by UP via the Laredo gateway.

Response to Request No. 96:

See Response to Request No. 94.

Request No. 97:

Produce all studies, analyses, and reports created since 2004 regarding rail traffic moving to or from Mexico that could be originated or terminated in the U.S. by both KCS and UP.

Response to Request No. 97:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding. Applicants further object to this Request because it seeks documents for a 16-year period, which is facially overbroad and unduly burdensome. Applicants further object to this Request on the grounds that it seeks “all” studies, analyses, and reports regarding rail traffic moving to or from Mexico to or from the US by both UP and KCS, as it encompasses

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Michael L. Rosenthal

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5448
mrosenthal@cov.com

By Electronic Mail

December 3, 2021

David L. Meyer, Esq.
Law Office of David L. Meyer
1105 S. Street N.W.
Washington, D.C. 20009

William A. Mullins, Esq.
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037

**Re: Union Pacific's First Set of Discovery Requests in STB
Docket No. FD 36500, Canadian Pacific Railway
Company—Control—Kansas City Southern**

Dear David and Bill:

This letter is to follow up on our December 1 meet and confer regarding Applicants' responses and objections to Union Pacific's first set of discovery requests to Applicants.

During our meet and confer, Applicants provided certain clarifications and confirmations of their responses and objections, and the parties reached certain agreements with respect to several of the requests, responses, and objections. I want to make sure we have a common understanding on these points.

Request No. 3: Applicants agreed to provide a data dictionary for the Workpaper "FD 36500 – Workpaper – HC – 2019_CONSOLIDATED_CPKCS_DATA_MASTER.txt."

Request No. 4: Applicants agreed they would perform a reasonable search for responsive documents in the possession of KCSM.

Request No. 5: Applicants confirmed they would perform a reasonable search for responsive documents in the possession of KCSM.

Request No. 19: Applicants confirmed (in discussing this request and Request No. 117) that they have no documents studying, analyzing, or discussing the effect of the Proposed Transaction on operations over the Laredo Bridge apart from the information contained in the Application and Workpapers.

Request Nos. 32, 34, 35, and 36: In light of Applicants' response that they would produce documents "provided to CP's board of directors," Union Pacific asked whether Applicants planned to produce documents provided to Keith Creel in his role as Chief Executive Officer of CP, even if the documents were not provided to the entire board of directors. CP suggested there is likely no material difference in those sets of documents, but said it would confirm.

COVINGTON

David L. Meyer, Esq.
William A. Mullins, Esq.
December 3, 2021
Page 2

Request No. 53: Applicants agreed they would perform a reasonable search for responsive documents in the possession of KCSM.

Request Nos. 66 & 67: Applicants stated that the reference statements were based on Mr. Ottensmeyer's understanding of the STB's decision regarding the KCS/Tex Mex Transaction and his experience and that Mr. Ottensmeyer did not rely on any particular documents for support.

Request No. 70: Applicants agreed to produce responsive documents with the understanding that the temporal scope of the request was January 1, 2019 to the present.

Request Nos. 94–96: In light of KCS's representations regarding its document retention policies, Union Pacific agreed to narrow the scope of the requests to the period from 2016 to the present. In an effort to accommodate KCS's concerns about burden, Union Pacific also agreed to identify an initial group of five commodities to be searched. The parties agreed to revisit the requests after KCS performs initial searches regarding those commodities and develops a better understanding of the burden involved. Union Pacific will provide a list of the initial group of five commodities.

Request No. 97: Union Pacific agreed to narrow its request to seek only documents specifically identifying actual or potential competition between UP and KCS. KCS agreed to perform a reasonable search for responsive documents in the possession of KCS and KCSM.

Request No. 98: UP agreed to narrow its request to seek only analyses, and reports (and not documents relating to specific lost business opportunities). KCS agreed to perform a reasonable search for responsive documents in the possession of KCS and KCSM.

Requests Nos. 99–101: Applicants agreed they would perform a reasonable search for responsive documents in the possession of KCSM.

Please let me know if you disagree with any of the points described above.

Sincerely,

Michael Rosenthal

Rosenthal, Michael

From: WMullins@bakerandmiller.com
Sent: Tuesday, January 25, 2022 11:24 AM
To: Rosenthal, Michael
Cc: Cyrm@sullcrom.com; Agarwal, Pratik; Sarnoff, Zachary A.; Vandergrift, Sophia A.; David Meyer; eglavich@bakerandmiller.com; AMcDonald@bakerandmiller.com
Subject: RE: FD 36500 - Follow up regarding meet and confer

[EXTERNAL]

I think a phone call might be helpful here. I think the problem here is that you assume that KCS has certain information stored in certain ways, and that because of that a host of information is responsive and should be produced. Your assumptions are incorrect. We have said from the beginning we would conduct a reasonable search. When search terms proved unreasonable, we searched for and provided other documents that addressed the heart of your requests. Despite these efforts, you keep going back to your assumptions of what should be available, and in effect expanded and shifted the scope of your requests beyond your original ask. What you demand now would require a special study."

Before I explain further, I want to address the clarification of what UP is actually looking for in hopes we can short circuit the rest. In your January 24 email, you said that "the issue that UP sought to address with its discovery requests: how does KCS/KCSM price single-line movements and the rates it offers for interline movements when it is competing with UP for business moving between Mexican points and points in the U.S. served by KCS." We have answered that request. We have produced KCS's pricing policy, and it may be found at Bates number KCSR-HC-00016399. Together with the PRB reports and our interrogatory responses on how KCS develops rates, we believe they provide the "how" KCS prices cross-border traffic. I am not sure what more you need. But, if you would like to pick one of your examples, I will commit to looking for any further documents and will run an email search (limited to the time period surrounding the RFP) for that example.

As I have mentioned before, it appears that you may have expanded and shifted your requests. Originally you asked for communications between KCS and KCSM on cross-border rates. Now you want, in addition, the pricing range and an explanation for rates in the PRB reports, and final offered rates. You seem to assume that this is a one-stop-shop for rates in which KCS can pluck a file out that contains the life span of a rate, from RFP to final offer or that a simple search for "UP-KCSM" and "UP-KCSR" will deliver the whole pricing package. This is not the case. Rate development is separate from a record of final rates and both are separate from PRB reports.

[REDACTED]

In order to figure out which rates are responsive, KCS would have to conduct a special study to identify which customers, for which lanes, represent rates for single-line movements or rates for interline movement in which UP competes with KCS for cross-border traffic. Only then could anyone tell which rate discussions or final rates or PRB reports is relevant.

This is why search terms present such a problem – UP and competition with UP is not dispositive. Individual customers, individual lanes are. We ran your proposed search strings just as you suggested in order to try and narrow the request. 206 documents came back, and that is with the fact that the search picks up iterations of "up" (such as duplicate, supposition, update, and up). Not a single document was responsive. Not one document had "KCSM-KCS" or "KCSM-UP." The vast majority of documents had nothing to do with pricing or rates. Not one document discussed UP, let alone in terms of lanes or rates or competition.

This is why KCS originally ran just the commodities as terms when trying to determine the scope of a reasonable search. Benzene, the narrowest commodity you asked for, returned 13,000 documents for one year. There is no clear way to distinguish between rate discussions that are relevant and just any rate discussion without reading the document and knowing beforehand that UP and KCS compete for it.

STB discovery rules do not require parties to undertake special studies. Further, it just does not make sense in terms of burden, cost, effort, or time to pull every instance of a rate, from RFP to offer. That level of granularity is not called for in this kind of proceedings. You have previously said that you wanted to know how KCS prices. We have given you the pricing policy, high-level strategy, interrogatories that explain pricing considerations. We additionally offer you specific examples from the PRB reports. Now, because that information did not appear to provide you what you wanted, you have gone back to requesting a special study and an unduly burdensome, wasteful, and unnecessary search.

William ("Bill") A. Mullins
 Partner
 Baker & Miller PLLC
 Suite 300
 2401 Pennsylvania Ave, N.W.
 Washington, D.C. 20037
 (202) 663-7823 (Direct)
 (202) 663-7849 (Fax)

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-----"Rosenthal, Michael" <mrosenthal@cov.com> wrote: -----

To: "WMullins@bakerandmiller.com" <WMullins@bakerandmiller.com>

From: "Rosenthal, Michael" <mrosenthal@cov.com>

Date: 01/24/2022 10:05AM

Cc: "Cyrn@sullcrom.com" <Cyrn@sullcrom.com>, "Agarwal, Pratik" <PAgarwal@cov.com>, "Sarnoff, Zachary A." <sarnoffz@sullcrom.com>, "Vandergrift, Sophia A." <vandergrifts@sullcrom.com>, David Meyer <david@meyerlawdc.com>, "eglavich@bakerandmiller.com" <eglavich@bakerandmiller.com>, "AMcDonald@bakerandmiller.com" <AMcDonald@bakerandmiller.com>

Subject: RE: FD 36500 - Follow up regarding meet and confer

Bill,

As you acknowledge, the PRB materials that Applicants have produced do not reflect the actual prices that were actually offered. They are thus no substitute for a search of the pricing documents UP requested from Applicants, or the searches we have been discussing. Can you confirm that Applicants are refusing to do the type of document searches addressed in my January 18 email (and prior emails)?

Moreover, the PRB materials that Applicants have produced seem to address pricing for selected large contracts. They do not appear at all focused on the issue that UP sought to address with its discovery requests: how does KCS/KCSM price single-line movements and the rates it offers for interline movements when it is competing with UP for business

moving between Mexican points and points in the U.S. served by KCS. Indeed, it is not clear that any of the PRB documents that Applicants have provided even touches on that issue.

Finally, despite what you say, it does not appear that the PRB materials that Applicants produced can be used to determine the pricing offered, or even a range, at least not without access to other documents. If they can, then please tell me the pricing or the range (and explain how you derived it from the PRB materials) for:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regards,

Mike

From: WMullins@bakerandmiller.com <WMullins@bakerandmiller.com>
Sent: Friday, January 21, 2022 2:11 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Cyrm@sullcrom.com; Agarwal, Pratik <PAgarwal@cov.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Vandergrift, Sophia A. <vandergrifts@sullcrom.com>; David Meyer <david@meyerlawdc.com>; eglavich@bakerandmiller.com; AMcDonald@bakerandmiller.com
Subject: RE: FD 36500 - Follow up regarding meet and confer

[EXTERNAL]

You are correct that the PRB materials do not reflect the actual price that was offered. [REDACTED]

William ("Bill") A. Mullins
Partner
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
(202) 663-7823 (Direct)
(202) 663-7849 (Fax)

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-----"Rosenthal, Michael" <mrosenthal@cov.com> wrote: -----

To: "WMullins@bakerandmiller.com" <WMullins@bakerandmiller.com>
From: "Rosenthal, Michael" <mrosenthal@cov.com>
Date: 01/20/2022 09:00AM
Cc: "Cyrm@sullcrom.com" <Cyrm@sullcrom.com>, "Agarwal, Pratik" <PAgarwal@cov.com>, "Sarnoff, Zachary A." <sarnoffz@sullcrom.com>, "Vandergrift, Sophia A." <vandergrifts@sullcrom.com>, David Meyer <david@meyerlawdc.com>, "eglavich@bakerandmiller.com" <eglavich@bakerandmiller.com>, "AMcDonald@bakerandmiller.com" <AMcDonald@bakerandmiller.com>, "Agarwal, Pratik" <PAgarwal@cov.com>
Subject: RE: FD 36500 - Follow up regarding meet and confer

Bill,

I looked at the new production. None of the "Pricing Review Board" documents appears to include the pricing that was actually being considered, or actually offered -- the documents merely summarize the opportunity and general strategy. Am I missing something?

Regards,

Mike

From: Rosenthal, Michael
Sent: Tuesday, January 18, 2022 8:15 PM
To: 'WMullins@bakerandmiller.com' <WMullins@bakerandmiller.com>
Cc: Cyrm@sullcrom.com; Agarwal, Pratik <PAgarwal@cov.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Vandergrift, Sophia A. <vandergrifts@sullcrom.com>; David Meyer <david@meyerlawdc.com>; eglavich@bakerandmiller.com; AMcDonald@bakerandmiller.com
Subject: RE: FD 36500 - Follow up regarding meet and confer

Bill,

Thank you very much for your response. I will review the new production. I have not seen it yet.

With regard to the issue of document searches, I understand the points you are making. But telling me that "benzene" returns 10,000 hits and that the use of "And" does not guarantee that terms are related does not really respond to my request. Using the add connector should substantially reduce the number of documents. How many of the "benzene" document include "UP and KCS and KCSM?" How many of those also use "single-line" or KCSM-KCS or KCS-KCSM? How many of those also use "Rule 11" or UP-KCSM or KCSM-UP?" Each step should reduce the number of potentially responsive documents. If the numbers are too high, we can talk about how to reduce the scope -- for example, by focusing on senior level people.

I also understand that people don't always use official terms. My request is that you use the official terms and other common terms that people in the marketing department use to represent when establishing single-line and Rule 11 prices for the same move. If there are no such terms, fine; if there are many, then use the common ones. I recognized this won't necessarily capture every potentially responsive document, but that is the nature of this type of search -- it

may be somewhat over-inclusive, it may be somewhat under-inclusive. That's why you run searches and see what happens.

I've done this before. I've been on live phone calls with opposing counsel where we have adjusted the search terms to generate reasonable numbers of potentially responsive documents. I'm not sure why you've run a bunch of commodities other than plastics, and I don't think I ever asked for Intermodal, but 13,000 hits for "benzene" for one year seems like a reasonable start (especially because this is apparently for multiple people, since you say you got 11,000 hits for benzene, grain, and intermodal for one senior person). Now add terms designed to identify documents in which KCS addresses UP-KCSM moves and also addresses both single-line and interline pricing, and I suspect the number will shrink further. If you've pulled the data, it should be easy to run the tests. And if it turns out most of the hits come from spreadsheets, we can talk about excluding those documents, or making other changes to produce a reasonable number of hits.

Regards,

Mike

From: WMullins@bakerandmiller.com <WMullins@bakerandmiller.com>
Sent: Tuesday, January 18, 2022 5:25 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Cc: Cyrm@sullcrom.com; Agarwal, Pratik <PAgarwal@cov.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Vandergrift, Sophia A. <vandergrifts@sullcrom.com>; David Meyer <david@meyerlawdc.com>; eglavich@bakerandmiller.com; AMcDonald@bakerandmiller.com
Subject: RE: FD 36500 - Follow up regarding meet and confer

[EXTERNAL]

Mike, below we respond to your January 10 email. Responses in Red. The production we intended to go out last week will be out later today or tomorrow morning.

William ("Bill") A. Mullins
Partner
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037

(202) 663-7823 (Direct)

(202) 663-7849 (Fax)

The above message may be privileged, confidential and protected from disclosure by attorney/client, work product or other privileges. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error. Then delete it. Thank you.

-----"Rosenthal, Michael" <mrosenthal@cov.com> wrote: -----

To: Cyr

From: "Rosenthal, Michael" <mrosenthal@cov.com>

Date: 01/10/2022 10:03AM

Cc: "Agarwal, Pratik" <PAgarwal@cov.com>, "Sarnoff, Zachary A." <sarnoffz@sullcrom.com>, "Vandergrift, Sophia A." <vandergrifts@sullcrom.com>, David Meyer <david@meyerlawdc.com>, Bill Mullins <wmullins@bakerandmiller.com>

Subject: RE: FD 36500 - Follow up regarding meet and confer

Thanks very much for your responses. I have a few follow-up questions.

1. I realize you might have prepared this response before reviewing the email I sent yesterday, but with regard to UP Request No. 4, I have not seen any material reflecting communications with customers (and others) asking them to contact the STB or others to support the proposed transaction. While I do not expect applicants to produce copies of every document actually sent to every potential supporter, I suspect there were some standard communications and a list of recipients. If I've overlooked that information in the production, please tell me where to find it. If applicants did not solicit support statements through written communications, please let me know.

RESPONSE: In today's (or tomorrow morning's) production, KCS is producing a number of letters to third parties, template support letters sent to customers/shippers, and letters sent to US government officials. We will also provide the lists of third parties/officials who received the letters (if not obvious from documents).

2. With regard to UP Request No. 5, as indicated in the email I sent yesterday, our review of the depository points to the existence of additional submissions to COFECE and or IFT. Such documents are referenced in the documents that were produced (or so my Spanish speaking colleagues tell me).

RESPONSE: KCS is searching for and will produce additional substantive documents provided to COFECE and IFT relating to the Proposed Transaction.

3. With regard to the requests you say are complete, could you tell me where I can find documents produced in response to UP Request Nos. 70, 74, 90, 93, 113, and 122 (or confirm that your searches did not identify responsive documents).

RESPONSE:

Below are the Bates numbers for documents that are responsive primarily to the Requests you identified. As you are aware, UP's requests are extremely broad and documents may be responsive to multiple requests, including the ones you identified. This list is not intended to be comprehensive of every document that may be responsive.

Request No. 90 was mistakenly included as completed last week. Documents responsive to this request are in today's production at Bates numbers: KCSR-HC-00015675 to KCSR-HC-00015784.

UP 70 & 113: KCSR-HC-00012593

UP 74: These documents may be found under the Venue folder "HIGHLY CONFIDENTIAL - Ice Pick Documents"

UP 93: KCS does not have non-privileged documents responsive to this Request.

UP 122: KCSR-HC-00011604

KCSR-HC-00011609

KCSR-HC-00011611

KCSR-HC-00012594

KCSR-HC-00012599

KCSR-HC-00012615

KCSR-HC-00012664

KCSR-HC-00012678

KCSR-HC-00012706

KCSR-HC-00012717

KCSR-HC-00013031

4. With regard to UP Request Nos. 94 through 94, I appreciate the additional information. To be clear, are you saying that when a customer with a U.S. facility that is accessible to both KCS and UP wants to send its product to a Mexican destination served by KCSM, the same KCS personnel would set both the KCS-KCSM single line rate and the KCSM Rule 11 rate that the customer can use in conjunction with a UP Rule 11 rate (or would provide KCSM's revenue requirement to UP if the railroads offer a joint through rate)? Also, are you saying the Pricing Review Board generally addresses both single-line rates to be offered by KCS-KCSM and rates KCSM offers for shippers that want to interchange traffic with UP at Laredo?

In any event, I would not characterize the major limiting factor in the searches I'm proposing as "UP" and "rate." I'm not looking for all documents setting rates when UP interchanges traffic with KCSM or KCS. I'm looking for documents where the U.S. side of the movement is served by both KCS and UP. I expect the documents would include the terms: (1) UP (or Union Pacific), KCS, and KCSM; and (2) "single-line" or "KCS-KCSM" or "KCSM-KCS" (or whatever terminology KCS personnel use when quoting single-line KCS-KCSM rates); and (3) "Rule 11" or "UP-KCSM" or "KCSM-UP" (or whatever terminology KCS personnel use when quoting KCSM rates for traffic interchanged at Laredo with UP). I'd also suggest

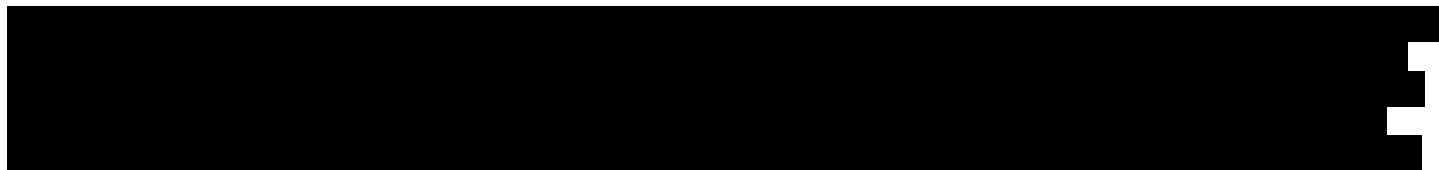
focusing the initial search on Plastics, so I'd propose including (4) Plastics, polypropylene, polyethylene, polyvinyl, polystyrene, or 28211!.

RESPONSE:

We are trying to provide some background on KCS's pricing practice in light of your requests and the searches you are asking for, and not attempting to put all of KCS's pricing into an email. To that extent, when we explained the pricing groups day-to-day work, we were doing so with a focus on what your search terms ask us to do: search and produce five years-worth of day-to-day routine business.

To back up a bit, the problem here is that your requests are based on a misconception of how KCS pricing works. Your requests assume that KCS and KCSM price separately (or have independent pricing groups) and that by seeking communications between the two, you would get a picture of how rates are set. This assumption is incorrect.

KCS has a core pricing team for all rates, US and Mexico. KCS and KCSM do not have separate pricing groups - and therefore communications between the two is not dispositive.



We already explained the basic considerations underlying pricing in our Response to UP's Request No. 148, served December 7. The Pricing Review Board reports provide insight into higher level pricing strategy.

Search terms do not resolve the undue burden problem. We ran test terms for the year 2019. For just one year: the term "benzene" brings back over 13,000 hits; "Grain" brings back almost 100,000 hit. BNSF has a similar request but asked for different commodities, including "intermodal" which brings back over a million hits for one year. Running benzene, grain, and intermodal against one senior level person brought back over 11,000 hits for one year for one person.

As such, there are some basic conceptual problems for running your proposed search. First, your (1) will pick up any instance of KCSM-KCS/KCSM-UP, which means, for example, the search will pick up every document that has in it "KCSM-KCS" and "KCSM-UP" and "plastic." Second, using "AND" as a connector means that those terms may have nothing to do with each other. This is a problem for complex spreadsheet that include disparate information. Add on top of that, as you recognize, people do not always use the official terms like "Rule 11" or "single-line" and may use shorthand, customer names, origination or destination, or other identifying language, which can greatly expand the number of terms to run. On top of that, you asked for five commodities that themselves have multiple terms. You suggested six different terms under the single commodity "plastics." You also asked for "field crops" which KCS does not recognize. We assume you mean "grain" which is a huge category and could consist of grain, soy, corn, wheat, rice, and so on, as well as STCC numbers, as well as grain by-products, such as DDG. Multiply the number of commodity terms, with the number of people, with possibly five years of

day-to-day communications, and you are asking KCS to run over a hundred search combinations and pull, search, and review millions of documents. Tweaks and alternative searches suffer from the same issues.

As we tried to explain, because there are no separate teams between KCS and KCSM and the core pricing team develops pricing on an individual basis, your Requests essentially demand KCS produce its day-to-day routine business documents for a period of five years. Specific commodities may narrow down what KCS has to produce, but the burden of searching and determining responsive documents still requires an effort that far exceeds the probative value. (We again question the value of these documents. In order to be useful in any regard, UP would have to reverse engineer individual rate discussions over time between multiple people, assuming that all relevant documents can even be identified let alone produced. Otherwise, any attempt to use a rate discussion would devolve into a debate about whether the rate discussion is complete, accurate, and representative.)

We produced the Pricing Review Board reports for your requested commodities in today's production and they may be found at Bates numbers KCSR-HC-00015675 to KCSR-HC-00015784. We invite you to review these and, if you are still missing something you need, please explain what you need so that we can get you helpful documents.

Cc: Agarwal, Pratik <PAgarwal@cov.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Vandergrift, Sophia A. <vandergrifts@sullcrom.com>; David Meyer <david@meyerlawdc.com>; Bill Mullins <wmullins@bakerandmiller.com>

Subject: RE: FD 36500 - Follow up regarding meet and confer

[EXTERNAL]

Mike,

Please see responses from CP and KCS below, in black.

Thanks,

Marc-André Cyr

Sullivan & Cromwell LLP

T: (857) 209- 1986 | cym@nullcrom.com

From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Wednesday, January 05, 2022 6:57 PM
To: David Meyer <david@meyerlawdc.com>; Bill Mullins <wmullins@bakerandmiller.com>
Cc: Agarwal, Pratik <PAgarwal@cov.com>; Sarnoff, Zachary A. <sarnoffz@sullcrom.com>; Vandergrift, Sophia A. <vandergrifts@sullcrom.com>; Cyr, Marc-André O. <cym@sullcrom.com>
Subject: [EXTERNAL] RE: FD 36500 - Follow up regarding meet and confer

David,

Thanks for your responses. I have a few follow-up questions. The numbers below correspond to the numbers used in my initial request and your responses.

1. We're reviewing the information you provided. I'll let you know if we need more help deciphering the data.

2. The answer refers to documents that have been or will be produced. For documents that have been produced, could you identify where in the depository we can find documents responsive to UP Request Nos. 53 and 99-100, to the extent you're not just referring to material in the Application or applicants' workpapers? The depository indicates where to find documents responsive to UP Requests Nos. 4 & 5, but the location of other responsive material is not obvious. For documents that "will be produced," can you tell me when you expect to produce them?

Response: KCS anticipates that it has substantially completed its production with respect to these requests. As you have noted, the depository indicates where to find documents responsive to Requests No. 4 & 5. KCS may have an additional document or two that are responsive to Request No. 4, which we expect will be produced this week. As previously mentioned, KCS's original responses included KCSM. For Request No. 53, KCS referred UP to the application and does not have additional documents. With respect to Nos. 99 - 101, as indicated in our responses, these requests seek "all" documents to support what amounts to economic and legal concepts. To the extent UP is seeking any document that may be used to support a general economic or legal concept, the request is overbroad. To the extent UP is asking whether KCS has specific studies or reports that reach Majure's quoted language, KCS does not have responsive documents.

3. Can you tell me when you expect to complete the search for and production of documents responsive to UP Request Nos. 97 & 98? I take it from the wording of the response that no documents have yet been produced. If I'm wrong, can you point me to their location in the depository?

Response: KCS expects to complete its search by the end of this week and will produce any responsive documents on a rolling basis as they are found. KCS has not yet produced specific responsive documents as called for in the as-narrowed requests. However, as UP is aware, the requests are broad, and other documents which KCS produces under other requests may also be responsive to UP 97 & 98.

4. Can you tell me when you expect to complete the search for and production of documents responsive to UP Request Nos. 32, 34, 35, and 36? Also, have you actually identified some responsive documents that you intend to produce on January 7?

Response: CP expects to produce documents responsive to Requests Nos. 32, 34, 35 and 36 by Friday, January 14. These documents are still being processed.

5. Thanks for your response.

6. Has KCS actually tried to conduct searches of emails to see how many hits are generated? If so, what search terms did you use, and how many hits did they generate? These requests are very important to UP. We've been constructive by agreeing to start with a very limited number of commodities and a very limited timeframe. It isn't sufficient simply to assert that our requests are still "unduly burdensome" without providing some information about the actual burden, so we can evaluate your claim and, if appropriate, develop additional proposals to address the burden issue. For example, once we know what search terms you've actually tried, we'd be more than happy to discuss methods of narrowing searches so they return a reasonable number of documents. We've used this process in other cases to ensure discovery requests are not unduly burdensome.

Response: KCS has not completed any email searches as of yet. As a test to confirm KCS's views about the burden associated with your email request, KCS is undertaking an email search for the 2019 time period and for one of your five commodities. The search should be completed by early next week. It is anticipated that such a limited search for just this one commodity and for one year will produce hundreds of thousands of emails. For example, a search using the terms "KCS", "UP", "rates", "grain (for example)", "pricing" and limiting to those personnel in the grain department and for just 2019, will likely produce hundreds of thousands of emails,

It might be helpful to provide you with some background. KCS does not think debating search terms will necessarily resolve the issue or get you relevant useful documents. Your requests seek communications between KCS and KCSM for traffic handled by UP via Laredo about UP/KCS/KCSM's rates. KCS does not have separate pricing departments for KCSR and KCSM. As such, KCS personnel discuss rates on almost a daily basis. Discussions include multiple people and multiple rounds.

The burden here is clear: each customer is discussed individually; the number of people who could have responsive documents is expansive; rate structures are developed over time; and individual communications may include partial information or unclear information. You are asking that KCS search through five years of its day-to-day operations. Even with your narrowed time period of six years and five general commodities, there are potentially hundreds of thousands of potentially relevant documents. Search terms do help narrow the field, and we will provide you with some of the terms we used, but as a foundation, the major limiting factor of your requests is the term "UP," a very common word, and "rate." These terms are used extensively by KCS on almost a daily basis. We believe that our test search for 2019 emails for just the one commodity will bear this out.

It is not clear how a hodgepodge of individual communications is useful or relevant. You would get documents on a level of granularity that does not make sense for this kind of proceeding. This is not an antitrust case in which you sometimes have years to produce relevant documents. In the time period provided for under the statute, it is nearly impossible for KCS to find, review, and produce every communication on every rate for five years on five commodities. There is little probative value in an incomplete picture of rate discussions.

From the thrust of your requests and your willingness to limit the requests to specific commodities, we surmise that UP is interested in the strategy behind how KCS sets rates as it pertains to UP. KCS does have what is called a "Pricing Review Board" (PRB). The PRB meets on a regular basis. The PRB reviews suggested prices and rates for new traffic and renewals of existing traffic. In lieu of your suggested email search, KCS is willing to search the PRB reports and provide reports that are

relevant to the five commodities and over the five year period. If there is something else that UP is seeking, KCS is open to further discussions

Finally, the questions I asked on December 24 involved requests we addressed during our December 1 meet and confer session. Can you tell me where the search/production process stands with regard to UP's other requests for which Applicants agreed to search for and produce responsive documents in our requests served November 8? Specifically, are there any UP Requests (other than those indicated in your responses below) for which the search/production process is complete? If so, which ones? For the others, when do you expect to have the process completed? We would like to move forward with scheduling depositions, and we can discuss scheduling issues in general, but it doesn't make sense to conduct the depositions until we've had a chance to review the documents we've requested.

Response: The following UP requests are complete: 2, 5, 6, 9, 10, 12, 16, 18, 21, 22, 23, 24, 29, 30, 44, 56, 57, 58, 59, 60, 64, 70, 73, 74, 75, 90, 91, 93, 113 and 122.

We expect the documents responsive to UP requests 46, 47, 48, 68, and 69 to be produced this week and anything remaining during the week of January 17.

Regards,

Mike

From: David Meyer <david@meyerlawdc.com>

Sent: Wednesday, January 05, 2022 5:33 PM

To: Rosenthal, Michael <mrosenthal@cov.com>; Bill Mullins <wmullins@bakerandmiller.com>

Cc: Agarwal, Pratik <PAgarwal@cov.com>; Zachary Sarnoff <sarnoffz@sullcrom.com>; Sophia Vandergrift <vandergrifts@sullcrom.com>; Cyr, Marc-André O. <cym@nullcrom.com>

Subject: Re: FD 36500 - Follow up regarding meet and confer

[EXTERNAL]

Mike –

We provide a response to your questions below:

1. Have Applicants produced a data dictionary for Workpaper "FD 36500 - Workpaper - HC - 2019_CONSOLIDATED_CPKCS_DATA_MASTER.txt"? I have not found it in the depository.

RESPONSE: My email to you of this morning should provide what you need.

2. In connection with UP Request Nos. 4, 5, 53, and 99 through 101, have Applicants completed their search for responsive documents that are in the possession of KCSM? If so, have responsive documents been added to the depository?

RESPONSE: KCS can confirm that for each of these requests, its reasonable search and responses included KCSM and that KCSM does not have additional responsive documents beyond what has been or will be produced.

3. In connection with UP Request Nos. 97 and 98, have Applicants completed their search for responsive documents that are in the possession of KCS and KCSM? If so, have responsive documents been added to the depository?

Response: KCS's reasonable search for responsive documents (including KCSM) is in process and responsive documents will be produced on a rolling basis as they are identified and processed.

4. In connection with UP Request Nos. 32, 34, 35, and 36, have Applicants investigated whether Mr. Creel was provided documents in his role as CEO that were not provided to the entire board of directors?

Response: CP's reasonable search for responsive documents is in process. Responsive documents identified to date will be produced by Friday, January 7. Additional responsive documents, if any, will be produced as they are identified and processed.

5. Have Applicants completed their search for documents responsive to UP Request No. 70? If so, have responsive documents been added to the depository?

Response: KCS has completed its reasonable search for responsive documents. The documents will be posted to the repository by end of this week.

6. In connection with UP Request Nos. 94 through 96, UP requests that KCS search for documents relating to the following five commodities: motor vehicles, field crops, plastics, petroleum lubricating oil, and benzene.

Response: KCS had taken your requests under advisement and conducted preliminary investigations. However, based on the manner in which KCS and KCSM do business, the results are still unduly burdensome. The requested searches would return documents at a level of granularity that is unduly burdensome, unduly broad, and not proportional to the needs of the proceeding. There is no justifiable need to produce every communication relating to every individual rate discussion on each opportunity for a period of five years, even if limited to the five commodities. In its

place, KCS will produce internal pricing strategy reports on new and renewed business relating to the requested commodities.

As always, let us know if you have questions.

David L. Meyer

Law Office of David L. Meyer

202-294-1399

David@MeyerLawDC.com

www.MeyerLawDC.com [meyerlawdc.com]

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email.

From: Michael Rosenthal <mrosenthal@cov.com>
Date: Wednesday, January 5, 2022 at 8:50 AM
To: David Meyer <david@meyerlawdc.com>, William Mullins <wmullins@bakerandmiller.com>
Cc: "Agarwal, Pratik" <PAgarwal@cov.com>
Subject: RE: FD 36500 - Follow up regarding meet and confer

David and Bill,

It would probably help streamline tomorrow's call with the ALJ if you could respond to the questions below today. More generally, given the passage of time since that request, and the apparent lack of new material being added to the document depositor (at least I haven't seen any notices of new material since the 17th, I think), can you tell me where production stands on all of UP's requests -- where is production complete, and where are searches/production still to come?

In addition, I still haven't received a response to my December 23 request for a data layout for the KCS 2010, 2015, and 2020 waybill files. When do you expect to provide the requested information?

Regards,

Mike

From: Rosenthal, Michael
Sent: Friday, December 24, 2021 11:01 AM
To: David Meyer <David@MeyerLawDC.com>; Bill Mullins <wmullins@bakerandmiller.com>
Cc: Agarwal, Pratik <PAgarwal@cov.com>
Subject: FD 36500 - Follow up regarding meet and confer

David and Bill,

A few points to follow up on our meet and confer call earlier this month:

1. Have Applicants produced a data dictionary for Workpaper "FD 36500 - Workpaper - HC - 2019_CONSOLIDATED_CPKCS_DATA_MASTER.txt"? I have not found it in the depository.
2. In connection with UP Request Nos. 4, 5, 53, and 99 through 101, have Applicants completed their search for responsive documents that are in the possession of KCSM? If so, have responsive documents been added to the depository?
3. In connection with UP Request Nos. 97 and 98, have Applicants completed their search for responsive documents that are in the possession of KCS and KCSM? If so, have responsive documents been added to the depository?
4. In connection with UP Request Nos. 32, 34, 35, and 36, have Applicants investigated whether Mr. Creel was provided documents in his role as CEO that were not provided to the entire board of directors?
5. Have Applicants completed their search for documents responsive to UP Request No. 70? If so, have responsive documents been added to the depository?
6. In connection with UP Request Nos. 94 through 96, UP requests that KCS search for documents relating to the following five commodities: motor vehicles, field crops, plastics, petroleum lubricating oil, and benzene.

Regards,

Mike

From: Rosenthal, Michael
Sent: Friday, December 03, 2021 4:16 PM
To: David Meyer <David@MeyerLawDC.com>; Bill Mullins <wmullins@bakerandmiller.com>
Cc: Agarwal, Pratik <PAgarwal@cov.com>
Subject: FD 36500 - Letter re meet and confer

David and Bill,

Please see the attached letter regarding our December 1 meet and confer call. Thanks again for a productive discussion.

Regards,

Mike

****This is an external message from: mrosenthal@cov.com ****

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.