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PUBLIC VERSION

BNSF-148

September 23, 2024

BY E-FILING

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

Re: Finance Docket No. 32760 (Sub No. 46)
BNSF Railway Company—Terminal Trackage Rights—
The Kansas City Southern Railway Company and
Union Pacific Railroad Company

Dear Ms. Brown:

BNSF Railway Company (“BNSF”) hereby submits its reply to Kansas City Southern Railway Company’s (“KCS”) Supplementary Evidence on Compensation Concerning BNSF’s Use of the Rosebluff Lead (“KCS Supplemental Evidence”), pursuant to the direction of the Surface Transportation Board (“STB” or “Board”) in *Decision No. 11* in the above-referenced proceeding. Enclosed with this letter is the Reply Verified Statement of Michael R. Baranowski (“Baranowski Supplemental Reply VS”). We are also separately submitting workpapers for the Baranowski Supplemental Reply VS.

In earlier filings made more than three years ago in the compensation phase of this proceeding, BNSF and KCS each stated that a traditional application of the Board’s *SSW Compensation* methodology would not be appropriate for setting compensation for BNSF’s use of the Rosebluff Lead via terminal trackage rights. KCS restated that point in its recent letter submitting its Supplemental Evidence. Notwithstanding these views, BNSF and KCS each provided expert reports and

evidence that the Board could use to determine the traditional *SSW Compensation* methodology components, if the Board decided to do so. For its part, UP “decided not to complicate this matter by submitting separate calculations.” UP/SP-433 at 1 (Jan. 26, 2021).

Before replying to the KCS Supplemental Evidence, BNSF emphasizes that its position in this compensation phase has not changed since its last substantive submission in this proceeding on May 11, 2021 (BNSF-147). As summarized in BNSF-147 at 1-2, BNSF has asked the Board to find that:

- (1) As the RASA and UP/SP merger conditions provide, BNSF should pay UP the Prescribed Fee for BNSF’s trackage rights service.
- (2) KCS is not owed any compensation as a result of BNSF’s use of the Rosebluff Lead within UP’s ownership and usage share of the property beyond that which KCS and UP have already determined in their cost-sharing arrangements. KCS may have a breach of contract action against UP, but any such right of action is not relevant to the compensation set for BNSF’s terminal trackage rights access.
- (3) If the Board finds that KCS is owed additional compensation beyond that which KCS and UP have agreed in their cost-sharing arrangements, UP must pay that compensation. UP agreed to allow BNSF to use its assets, subject to BNSF’s payment of the Prescribed Fee, in order to obtain the Board’s approval for the UP/SP merger. If that agreement with BNSF, set by the Board as a condition, now requires compensation to KCS, then UP must be responsible for it.¹

In *Decision No. 11*, the Board stated that it “has not yet made a determination as to what compensation approach to use in this proceeding.” *Decision No. 11*, FD 32760 (Sub-No. 46), slip op. at 2. Nevertheless, the Board ordered KCS to submit supplemental analysis and data for its line-segment earnings calculations, in order to address an apparent “anomaly [that] concerns the Board and suggests possible errors in the line-segment analysis produced by Neels.” *Id.*, slip op. at 7. Specifically, the Board explained that the data submitted by KCS

¹ In its cover letter submitting its Supplementary Evidence, KCS characterized Lyondell as “the shipper for which the trackage rights fee is being developed for BNSF to directly serve.” BNSF has stated throughout this compensation phase of the proceeding that the Board should set compensation terms that apply to all BNSF terminal trackage rights movements on the Rosebluff Lead, not just BNSF movements to the Lyondell facility. See BNSF-144 at 11-14 (Jan. 26, 2021); BNSF-146 at 10-12 (Apr. 12, 2021).

suggests that KCS's earnings on the Rosebluff Lead were negative under the traditional "capitalized earnings" or "CE" approach to valuation of the line under the Board's *SSW Compensation* methodology. The Board also allowed BNSF and UP to reply to KCS's evidence.

In Dr. Neels's Verified Statement submitted with KCS's Supplemental Evidence, Dr. Neels made **no corrections or other modifications** to his CE analysis and affirmed that the results of his analysis generate allocated KCS earnings on the Rosebluff Lead that are positive, notwithstanding the Board's concerns. *See* Neels Supplemental Statement at 21. Mr. Baranowski analyzed Dr. Neels's work in the enclosed Verified Statement. Mr. Baranowski explains that, because Dr. Neels did not change his initial analysis, the changes that Mr. Baranowski made in 2021 to Dr. Neels's results – better aligning them with prior Board CE precedent and the specific circumstances of the Rosebluff Lead – remain valid. Mr. Baranowski also explains that, after the adjustments he made in 2021, KCS net earnings on the Lead are positive.

Finally, Mr. Baranowski states that the Board should reject Dr. Neels's new proposal to exclude BNSF traffic in implementing the Board's average total cost ("ATC") revenue division methodology, because it is conceptually flawed, unverifiable, and beyond the scope of the Board's order in *Decision No. 11*.

Indeed, BNSF hereby objects to, and moves to strike, Section V of the Neels Supplemental VS, contained on pages 36-44 (also numbered pages 41-49), which contains the new ATC proposal, and any related workpapers. First, as Mr. Baranowski explains, Dr. Neels developed this material using a proprietary model to which neither Mr. Baranowski nor the Board have access. Therefore, neither Mr. Baranowski nor the Board can properly analyze and attempt to verify Dr. Neel's analysis. The Board should not allow such unverifiable material to be part of the record in this proceeding.

Second, the scope of this material clearly exceeds the Board's order for KCS to "submit supplemental analysis and data, including workpapers, for its line-segment earnings calculations in accordance with the direction in [*Decision No. 11*]." *Decision No. 11*, FD 32760 (Sub-No. 46), slip op. at 8. The Board has struck evidence or argument, or deemed such material waived, where those arguments or evidence could have and should have been presented in the earlier stages of the proceeding. *See, e.g., New England Central R.R., Inc.—Trackage Rights Order—Pan Am Southern LLC*, FD 35842, slip op. at 4 (STB served Apr. 26, 2018); *Consumers Energy Co. v. CSX Transp., Inc.*, NOR 42142, slip op. at 3 (STB served Dec. 9, 2016).

The Board intended for the parties to complete their argument and evidentiary submissions in this compensation phase more than three years ago. The

Board's order in *Decision No. 11* was clear: KCS should either correct or defend the apparently erroneous KCS line-segment earnings calculations flagged by the Board. The Board **did not** invite KCS (or any of the other parties) to submit entirely new arguments and evidence that the parties could have made earlier and that are unrelated to the Board's direction in *Decision No. 11*. Dr. Neels and KCS could and should have made the arguments in Section V of the Neels Supplemental VS in 2021. Accordingly, the Board should strike from the record Section V of the Neels Supplemental VS.

BNSF appreciates the Board's efforts to bring this long-standing proceeding to a conclusion by setting terminal trackage rights compensation for BNSF's use of the Rosebluff Lead that affirms the proper implementation of the competition-preserving UP/SP merger conditions set by the Board.

Sincerely,

/s/ Peter W. Denton

Peter W. Denton

Enclosures

cc: Adrian L. Steel, Jr., Esq.
William A. Mullins, Esq.
Michael L. Rosenthal, Esq.
All parties of record

PUBLIC VERSION

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

APPLICATION FOR TERMINAL TRACKAGE RIGHTS

REPLY SUPPLEMENTARY STATEMENT ON COMPENSATION
VERIFIED STATEMENT OF

MICHAEL R. BARANOWSKI

SEPTEMBER 23, 2024

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I. INTRODUCTION

I am Michael R. Baranowski, a Senior Managing Director at FTI Consulting and the head of FTI's Network Industries Strategies group within the Economic Consulting division. I have been asked by BNSF Railway Company ("BNSF") to respond to the August 23, 2024 Verified Statement of Dr. Kevin Neels filed in this proceeding on behalf of Kansas City Railway Company ("KCS") at the invitation of the Surface Transportation Board ("STB" or "Board") ("Neels Supplemental Statement"). Specifically, in its November 28, 2023 Decision No. 11, the Board voiced concern about what it believed to be an error in the capitalized earnings ("CE") calculations submitted by Dr. Neels and ordered supplemental analyses and data. In his Supplemental Statement, Dr. Neels made no corrections or other modifications to his CE analysis and affirmed that the results of his analysis generate allocated KCS earnings on the Rosebluff Lead that are positive.¹ In this Supplemental Verified Statement, I explain that, because Dr. Neels did not change his initial analysis, the changes that I made to his results in my April 21, 2021 Reply Verified Statement ("Reply") to better align them with prior Board CE precedent and with the specific circumstances of the Rosebluff Lead remain valid. I also explain that the lack of transparency in Dr. Neels's workpapers that lies at the foundation of his analysis, resulting from his failure to provide the Brattle Network Model, hindered my efforts to properly restate his results and confirm that, after the adjustments I was able to make, KCS net earnings on the Lead are positive.²

¹ Neels Supplemental Statement at 21.

² Dr. Neels also proffers an alternative formulation for CE that removes density from BNSF traffic on the Lead as part of the ATC revenue allocation. I explain that Dr. Neels's proposed alternative is beyond the scope of the Board's invitation, conceptually flawed and unverifiable and should be rejected.

As background, I submitted an Opening Verified Statement in this proceeding on January 26, 2021, in which I explained that the specific circumstances surrounding BNSF access to the Rosebluff Lead affirm that KCS is not entitled to any compensation for BNSF direct access under the *SSW Compensation* principles beyond what KCS receives under the existing cost-sharing arrangements with Union Pacific Railroad Company (“UP”). Specifically, BNSF has been accessing customers on the Rosebluff Lead via reciprocal switch under the UP/SP Merger conditions since 1996, and { [REDACTED] [REDACTED] [REDACTED] }.

My Opening Verified Statement also explained that, should the Board determine that KCS should instead be compensated for BNSF direct access under a more traditional application of the *SSW Compensation* methodology, any compensation due to KCS should be limited to its ownership-adjusted share of the variable cost and maintenance and operating cost components of the *SSW Compensation* methodology. No interest rental compensation under the *SSW* formulation is due to KCS because BNSF direct access to the Rosebluff Lead was granted as a result of arm’s-length merger-related negotiations between BNSF and UP, the latter of which acquired an ownership interest in the Rosebluff Lead via its merger with SP. KCS’s ownership interest in the Rosebluff Lead is not affected by BNSF’s access under the conditions of use imposed by the STB, and KCS is therefore not entitled to any interest rental related compensation. In addition, in accord with the Board’s express direction, BNSF will operate its direct service trains solely during UP’s 12-hour operating window, and BNSF will not use or infringe upon KCS’s rights as an owner of the Rosebluff Lead.³ Further, if the Board were to

³ See Decision No. 8 at 9.

find that KCS should receive *SSW Compensation*-related interest rental related to its ownership share, I developed an estimate of the interest rental amount based on a Replacement Cost New Less Depreciation (“RCNLD”) valuation adjusted to reflect KCS’s one-half ownership interest in the Rosebluff Lead.

I also submitted a Reply Verified Statement in response to the Opening Verified Statements of KCS witnesses Kevin Neels and Julie M. Carey. In that Reply, I explained that Dr. Neels calculations of *SSW*-based compensation are flawed and must be rejected. To the extent that I was able to make corrections to Dr. Neels’s results, Dr. Neels’s corrected *SSW Compensation* levels are below those that I calculated in my Opening Verified Statement. I also explained that Prof. Carey’s advocacy for a “market-based access fee” for KCS arises from her mistaken attempt to analogize the Rosebluff Lead access granted to BNSF with the forced switching contemplated by the Board in STB Docket No. EP 711. In addition, I explained that Prof. Carey’s development of such a “market-based access fee” from published reciprocal switch tariffs is contrived. When appropriate switching related costs are considered, Prof. Carey’s estimates of market-based contribution evaporate.

Specifically in regards to Dr. Neels work, which is presently at issue, in my Reply statement I detailed the conceptual and implementation flaws in Dr. Neels’s *SSW Compensation* formula application. Among the conceptual flaws are his failure to explain why it is only *now*, under BNSF *direct* access, that KCS would be entitled to any more compensation than it receives currently under the long-running BNSF reciprocal switch access and that his *SSW Compensation* calculations fail to consider properly the parameters of the direct access granted BNSF by the Board or the fact that KCS possesses only partial ownership of the Rosebluff Lead. Instead, his calculations treat KCS as the sole owner of the Rosebluff Lead.

The implementation flaws I identified in Dr. Neels's CE estimate include: (i) the inclusion of a phantom contribution from UP and KCS switching rates that are by design cost-based and generate no contribution, (ii) the failure to account for fixed costs when calculating the available earnings from revenues he allocates to the Rosebluff Lead, and (iii) the failure to account for KCS's partial ownership share. Correcting these and other errors in Dr. Neels's estimate reduces the interest rental component of his *SSW Compensation* fee from {{[REDACTED]}} per car mile to {{[REDACTED]}}.

I identified other flaws in Dr. Neels's *SSW Compensation* calculations beyond the interest rental component related to his calculation of the operating and maintenance component and his failure to adjust his calculation to reflect that KCS has only a partial ownership share. Doing so reduces his operating and maintenance component fee from {{[REDACTED]}}. Table 1 of my Reply Verified Statement, repeated below, compares my calculation of a conventional *SSW Compensation* from my Opening Verified Statement with Dr. Neels's calculations after correction of his conceptual and implementations flaws.⁴

⁴ I displayed my *SSW Compensation* based results on a per gross ton mile basis in my Opening Verified Statement. Dr. Neels develops his estimate on a car-mile (loaded or empty) basis. I have converted my opening results to a cost per car-mile basis for ease of comparison with Dr. Neels.

Table 1: Comparison of Baranowski Opening SSW Compensation Component Values to Neels Corrected Values⁵

<i>SSW Compensation to KCS Component Comparison, Per Car Mile</i>			
Fee Component	Baranowski Opening	Neels Corrected	Difference
Variable Costs	{{ [REDACTED] }}	[REDACTED]	[REDACTED]
Maintenance and Operating Costs	[REDACTED]	[REDACTED]	[REDACTED]
Interest Rental	[REDACTED]	[REDACTED]	[REDACTED]
Total Compensation	[REDACTED]	[REDACTED]	[REDACTED] }}

II. SPECIFIC ERRORS IN DR. NEELS CALCULATIONS

A. Overview of Neels's *SSW Compensation* Calculations

There are three essential elements of the *SSW Compensation* methodology:

- 1) the variable cost that is incurred by the owning carrier but attributable to the tenant carrier's operations;
- 2) the tenant carrier's usage-proportionate share of track maintenance and operating expenses; and
- 3) an interest or rental component to compensate the owning carrier for the tenant carrier's use of capital dedicated to the track by the owning carrier determined by multiplying the value of the assets by a rate of return equal to the railroad's current pre-tax nominal cost of capital.

Although I explained that the specific circumstances of BNSF access to the Rosebluff Lead do not entitle KCS to any additional compensation beyond what it receives under its existing cost sharing agreements with UP for a change from reciprocal switch to direct access, I calculated *SSW Compensation*-based compensation for potential use by the Board in the

⁵ See Baranowski Reply Workpaper "Compensation Calculations Reply.xlsx", tab "Tables"

alternative. Table 2 compares my estimates of the three *SSW Compensation* elements with those developed by Dr. Neels.⁶

Table 2: Comparison of *SSW Compensation* Results⁷

Fee Component	Baranowski	Neels	Difference
Variable Costs	{{ [REDACTED] }}	[REDACTED]	[REDACTED]
Maintenance and Operating Costs	[REDACTED]	[REDACTED] ⁸	[REDACTED]
Interest Rental	[REDACTED]	[REDACTED]	[REDACTED]
Total Compensation	[REDACTED]	[REDACTED]	[REDACTED] }}

There are two key conceptual difference between my and Dr. Neels's *SSW Compensation* results. The first relates to the scope of the Rosebluff Lead to which the fees apply. The *SSW Compensation* fee I developed is applicable to BNSF direct access to serve any customer located on the Rosebluff Lead. The access fees developed by Dr. Neels are tailored to apply only to BNSF access to the portion of the Rosebluff Lead needed to serve Lyondell. BNSF has argued persuasively in its Opening Statement and Reply that the Board should set compensation terms to apply to all BNSF terminal trackage rights movements, not just BNSF movements to Lyondell. The second conceptual difference relates to the development of the *SSW Compensation* interest rental component. My estimate is based on a RCNLD valuation of the portions of the Rosebluff Lead required by BNSF for access. Dr. Neels differs in his approach by developing an estimate of a CE valuation.

⁶ I displayed my *SSW Compensation*-based results on a per-gross-ton-mile basis in my Opening Verified Statement. Dr. Neels develops his estimate on a car-mile (loaded or empty) basis. I have converted my opening results to a cost-per-car-mile basis for ease of comparison with Dr. Neels.

⁷ See Baranowski Reply Workpaper "Compensation Calculations Reply.xlsx", tab "Tables"

⁸ In his Supplemental Statement, Dr. Neels increased his calculation of maintenance and operating costs to {{ [REDACTED] }} per car mile. See Neels Supplemental Statement at 36.

For other *SSW Compensation* components, as Table 2 shows, both Dr. Neels and I agree that BNSF direct access to the Rosebluff Lead does not introduce variable costs for KCS for which KCS would need to be compensated. For maintenance and operating costs, although Dr. Neels's result is more than twice mine, the vast majority of the difference between our two estimates is attributable to his failure to account for KCS's partial ownership share.

The largest numerical differences in our respective estimates of the *SSW Compensation* interest rental component are driven by Dr. Neels's failure to reduce his earnings estimate by the proportional share of fixed costs that he attributes to the Rosebluff Lead assets and his failure to adjust his estimate to reflect KCS's partial ownership share. These and other critical flaws in Dr. Neels's interest rental component calculations include:

- development of artificial contribution for UP and KCS Zone 1 and Zone 2 cost-based switches;
- failure to deduct fixed costs from estimates of contribution for UP and KCS Rosebluff Lead shipments;
- restriction of scope of compensation to portions of the Rosebluff Lead needed to access only Lyondell;
- failure to account for KCS's partial ownership share;
- use of a flawed and unsupported enterprise value to capitalize earnings; and
- use of the wrong empty-to-loaded ratio to estimate empty car miles.

The complexities of applying a CE valuation methodology in a terminal trackage rights proceeding are front and center in Dr. Neels's application. There is much uncharted territory. Dr. Neels's approach includes a number of unfounded assumptions related to joint ownership of the Lead, BNSF indirect access, and reciprocal switching, all of which are fraught with errors, omissions and inconsistencies that likely contributed to the Board's confusion relating to negative KCS earnings, as I explained in my Reply. Detailed narratives explaining each of my

adjustments are included in my Reply and will not be repeated here.⁹ My corrected Neels CE estimates from my Reply are summarized in **Error! Reference source not found.** below. This table shows the effects on the *SSW Compensation* fee per car-mile developed by Dr. Neels.

Table 3: Corrections Re-Stating Dr. Neels's Flawed SSW Interest Rental Per Car-Mile Calculations¹⁰

Neels Opening Results (Table 11, Line 5)	{{ [REDACTED] }}
Correction #1 - Remove artificial contribution from cost-based switching - 1/	[REDACTED]
Correction #2 - Deduct allocated fixed costs	[REDACTED]
Correction #3 - Expand to Rosebluff Lead	[REDACTED]
Correction #4 - Limit to KCS portion of earnings	[REDACTED]
Correction #5 - Use STB's 2019 pre-tax cost of capital	[REDACTED]
Correction #6 - Use empty-to-loaded ratio of 2.0	[REDACTED]
Neels Corrected Results	[REDACTED] }}
1/ - This change results in a per-car mile increase due to Dr. Neels's counter-intuitive results for joint switching where UP has negative contribution and KCS has positive contribution. The individual effect of removing the contribution Dr. Neels develops for KCS's zone 1 switching of UP cars, consistent with correction #4 above, would be to reduce the per-car mile amount to {{ [REDACTED] }}.	

III. BOARD POTENTIAL KCS ERROR DECISION

On November 28, 2023, the Board served Decision No. 11 in this proceeding based on what it believed to be an error in the CE earnings calculations submitted by Dr. Neels and ordered supplemental analyses and data. Specifically, the Board explains that, based on its preliminary review, the data submitted by KCS suggests that KCS's earnings on the full Rosebluff Lead were negative under the traditional CE approach, which the Board believes to be in error.¹¹ I understand that the Board explained to the parties at its Technical Conference that the sole basis for its concern of a potential error in the KCS submission was its review of the

⁹ See, e.g., Reply at 16-26.

¹⁰ See Baranowski Reply Workpaper "Restated Neels CE Results.xlsx", tab "Tables"

¹¹ Decision No. 11, slip op. at 7.

work papers that I submitted in support of my Reply. As set out above, in my Reply I made certain adjustments to Dr. Neels's CE calculations to align them with prior Board CE precedent and, more importantly, to tailor them to the specific circumstances of BNSF access to the Rosebluff Lead.¹² The result of that demonstration is that the adjusted CE-based *SSW Compensation* fee is below the RCNLD-based *SSW Compensation* fee that I calculated. Notably, the results also show that KCS earnings on the Lead are positive.

In his Supplemental Statement, Dr. Neels affirmed that the results of his CE analysis generate allocated KCS earnings on the Rosebluff Lead that are positive.¹³ Dr. Neels also speculates that the Board's observation of negative earnings may drive from an intermediate step in my restatement workpapers related to switch moves. In doing so he observes that in one step in my workpapers I "sum not over the operating carrier but over the source carrier" which he opines to be incorrect and inconsistent with his calculation.¹⁴ However, the step he describes occurs in the portion of my restatement workpapers where, as explained in my Reply and again below, I eliminate Dr. Neels's artificial contribution from reciprocal switches. As such, none of the sums related to the source rather than operating carrier are carried forward to my restated CE results. This is because, after eliminating artificial contribution, the source carrier and operating carrier are always the same for the set of traffic included in Dr. Neels' work.

I cannot speculate as to what the Board has observed, but confusion related to Dr. Neels's CE calculations for reciprocal switch moves between UP and KCS on the Lead is

¹² In Decision No. 11, the Board suggests that I did not adjust Dr. Neels's valuation multiplier as part of my restatement of his CE. Correction Number 5 in Table 3 above shows the results of my correcting Dr. Neels's valuation multiplier to be consistent with prior Board precedent. Notably, the cost of equity component of the Board's industry cost of capital determination is derived in part from projected earnings, not projected contribution.

¹³ Neels Supplemental Statement at 21.

¹⁴ Neels Supplemental Statement at 22, footnote 37.

understandable. As I explained in my Reply, approximately 30% of Dr. Neels calculated contribution for the Rosebluff Lead stem from his flawed assumption of UP and KCS earnings on the reciprocal switch services they provide for one another. The remainder of his calculated contribution covers the portion of linehaul revenues allocated to movements on the Rosebluff Lead. Of particular note is that all of the contribution that Dr. Neels calculates for reciprocal switches provided by UP is *negative*.

Table 4 is an example of Dr. Neels's Rosebluff Lead contribution calculation for a KCS shipment terminating in Zone 2 on the Rosebluff Lead, requiring a UP reciprocal switch. Table 4 shows the details of Dr. Neels's contribution calculation for two sample Rosebluff Lead shipments. The first, {{[REDACTED]}}, is a local UP shipment that terminates on the Rosebluff Lead in Zone 1, thus requiring a reciprocal switch from KCS. For the portion of the linehaul movement occurring on the Lead, Dr. Neels attributes {{[REDACTED]}} in revenue and {{[REDACTED]}} in variable cost, yielding a contribution of {{[REDACTED]}}. Dr. Neels then goes on to calculate contribution for the reciprocal switch. As I explained in my Reply, the UP and KCS reciprocal switch rates on the Rosebluff Lead are cost-based. The last updated cost study for the UP and KCS reciprocal switching was done in 2004 and determined the KCS switch cost per car to be {{[REDACTED]}} and the UP switch cost per car to be {{[REDACTED]}}. Since 2004, those costs have been indexed by {{[REDACTED]}}
{{[REDACTED]}}¹⁵

For his reciprocal switch contribution, Dr. Neels deducts from the Rosebluff Lead cost-based reciprocal switch rates the URCS system-average variable cost for an inter-terminal

¹⁵ KCS-HC-7764 to KCS-HC-7767.

switch.¹⁶ The difference is not contribution, as Dr. Neels asserts. All this figure represents is the difference between what the Board would describe as a movement specific cost of a reciprocal switch on the Rosebluff Lead and the URCS system average cost for what Dr. Neels considers to be a comparable switch. I referred to this difference as artificial contribution and eliminated it in my restatement of Dr. Neels's CE.

The second example in Table 4 is {{ }}. This is a local KCS shipment that terminates on the Rosebluff Lead in Zone 2, thus requiring a reciprocal switch from UP. For the portion of the linehaul movement occurring on the Lead, Dr. Neels attributes {{ }} in revenue and {{ }} in variable cost, yielding a contribution of {{ }}.

He also calculates reciprocal switch contribution for this shipment. However, because the inter-terminal switch cost developed by Dr. Neels for UP is higher than the cost-based Rosebluff Lead reciprocal switch charge, the reciprocal switch related contribution for this movement is negative.

Table 4: Examples of Neels's Rosebluff Lead Contribution Calculations¹⁷

	UP w/ KCS Zone 1 Switch	KCS w/ UP Zone 2 Switch
WB ID	{{ }}	{{ }}
Movement on the Lead:		
Revenue		
Variable Cost		
Contribution		
Reciprocal Switch:		
Revenue		
Variable Cost		
Contribution		
Total Contribution		{{ }}

¹⁶ I detailed the conceptual and practical problems with Dr. Neels use of the URCS inter-terminal cost in my Reply. Reply at 16-19.

¹⁷ See Baranowski Reply Workpaper

“Neels_Artificial_Contribution_Summary_Workpaper.xlsx”, tab “Tables”

While inclusion of a negative contribution for reciprocal switches performed by UP for KCS may appear conservative, a much higher proportion of reciprocal switches are performed by KCS in Zone 1 than by UP in Zone 2. Table 5 shows the total artificial contribution for UP and KCS for 2017 and 2018 that I eliminated.

Table 5: Amount of Artificial Contribution From Reciprocal Switching Included by Neels¹⁸

Switching Rail Road	Line Haul Rail Road	zone	year	Revenue	Total Variable Cost	Neels's Contribution
{						
}						}

A. Elimination of the Reciprocal Switch Related Artificial Contribution is Consistent with Neels's Costing Assumptions

Further confirmation of the need to eliminate Dr. Neels’s reciprocal switch based artificial contribution from any calculation of Rosebluff Lead earnings can be found in Dr. Neels own costing assumptions. While his costing assumptions can be described as unconventional, they reflect a combination of URCS variable costs and movement specific costs that recognize the reciprocal switch rates as costs. Specifically, through a combination of the proprietary Brattle Network Model – that has again not been provided as a workpaper – and computer code that was provided, Dr. Neels designated for costing purposes both of the sample moves in Table X as “Origin” and “Handover” (O-H) presumably representing the handing over of the shipment to the reciprocal switch provider. He then adds the reciprocal switch *rate* paid by UP and KCS to

¹⁸ See Baranowski Reply Workpaper
“Neels Artificial Contribution Summary Workpaper.xlsx”, tab “Tables”

one another as a *cost*. Table 6 shows the costs developed by Dr. Neels and the revenues that he uses for his reciprocal switch artificial contribution.

Table 6: Dr. Neels’s Development of Cost Recognize Reciprocal Switch Rates Are Actually Costs¹⁹

	UP w/ KCS Zone 1 Switch	KCS w/ UP Zone 2 Switch
WB ID	{{	}}
Shipment Year		
URCS Variable Cost		
Switch Cost		
Total Neels Calculated Shipment Cost		
Reciprocal Switch Revenue		
Difference Between Reciprocal Switch Revenue and Cost		}}

B. My Correction to Calculate Earnings Consistent with Prior Board Precedent Does Not Result in Negative KCS Earnings on the Lead

In Decision No. 11 the Board asserts that my correction to Dr. Neels’s CE calculations to reflect earnings and not contribution by accounting for fixed costs on the Lead produces its observed anomaly of negative KCS earnings. As Table 3 shows, after all of my CE adjustments are made – including accounting for fixed costs and limiting the earnings to just those of the KCS on the Lead (Correction #4) – the KCS net earnings on the Lead are not negative. To my knowledge, the Board has not provided any additional details or quantified the amount of its observed negative earnings.

As demonstrated above, my restatement of Dr. Neels’s CE does not result in net negative earnings for KCS on the Rosebluff Lead. That said, there are certain KCS shipments in my restatement workpapers with negative earnings. While the overall earnings for the vast majority

¹⁹ See Baranowski Reply Workpaper “Neels_Artificial_Contribution_Summary_Workpaper.xlsx”, tab “Tables”

of these shipments is positive,²⁰ the portion of the revenue attributable to the Lead using Dr. Neels flawed adaptation of ATC to a terminal trackage rights segment is not sufficient to cover his calculated variable and fixed cost on the Lead.²¹ To the extent that negative earnings are designed into the analysis, they are done so by Dr. Neels via the artificial contribution he develops for reciprocal switches provided by UP.

IV. DR. NEELS NEW PROPOSAL TO EXCLUDE BNSF TRAFFIC IN IMPLEMENTING ATC SHOULD BE REJECTED

Although Dr. Neels makes no corrections to his CE calculations in response to the Board's invitation, he does offer "an alternative trackage fee calculation for the Board's consideration."²² He observes that his ATC methodology includes in the density calculations traffic carried by UP and KCS on behalf of BNSF on its current indirect access basis that does not generate a contribution for the owners of the Lead.²³ He goes on to exclude BNSF traffic from his density calculations in implementing the ATC methodology. The change has the effect of increasing the ATC fixed cost attributed to UP and KCS shipments on the Lead, thereby increasing the ATC based revenue attribution. This in turn has the effect of increasing Dr. Neels's calculated SSW Compensation interest rental component from { [REDACTED]

[REDACTED]

²⁰ Railroads have the ability to price differentially. As such, not all shipment have revenues sufficient to cover an allocated share of fixed costs.

²¹ Because of Dr. Neels's failure to provide all of the necessary workpapers underlying his analysis, my restatement of his results is limited to relevant information available in the workpapers that he did produce. As such, my restatement necessarily applies his calculated fixed costs, which are influenced by density, to shipments on the Lead, possibly distorting actual earnings.

²² Neels Supplemental Statement at 36.

²³ *Id.*

■■■■■■}}. Dr. Neels's new alternative is, in addition to being well beyond the scope of the Board's invitation, conceptually flawed, and unverifiable.

Conceptually, Dr. Neels asserts that, on its current indirect access basis, BNSF traffic does not generate contribution for the owners of the Lead. This is belied by his own CE calculations, which develop and include revenues and costs for BNSF shipments handled by UP from BNSF's Lacassine Yard to the Rosebluff Lead.

More importantly, all of the density-related inputs to Dr. Neels's ATC cost allocation calculations (including the UP, KCS, and BNSF densities) are developed within the framework of the proprietary Brattle Rail Network Model. I explained in my Reply that KCS refused to provide the model as a workpaper absent my executing a non-disclosure agreement over and above the protective order in this proceeding under which the commercially sensitive waybill data were produced. The document included among other restrictions the following clause, to which I could not agree:

}²⁴

Additionally, KCS did not provide the model to the Board as a workpaper. As such, neither I nor the Board can determine if or how the BNSF densities were incorporated into the original ATC

²⁴ See Confidentiality and Non-Disclosure Agreement with Model Access Rules, “Confidentiality NDA Model Access Rules 02 22 2021-c2.docx”.

calculations or how they have been removed for the alternative calculations. The Board must reject Dr. Neels's alternative formulation.

V. CONCLUSION

Dr. Neels has affirmed in his Supplemental filing that he believes that no corrections are warranted for his CE calculations. As such, my restatement of the CE calculations he presented in 2021 – which do not result in negative earnings for KCS on the Rosebluff Lead – do not require modification. When I corrected Dr. Neels's CE calculations to align with prior Board precedent and with the terms of BNSF access to the Rosebluff Lead, the CE-based *SSW Compensation* interest rental is below that derived from the RCNLD approach.

The Board should reject Dr. Neels's alternative formulation,-removing density from BNSF traffic on the Lead, because it is beyond the scope of the Board's invitation, conceptually flawed, and unverifiable.

VERIFICATION

I, Michael R. Baranowski, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

A handwritten signature in black ink that reads "Michael Baranowski". The signature is written in a cursive style with a large, stylized 'M' and 'B'.

Michael R. Baranowski

Executed: September 23, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Tara Woods

Attorney for BNSF Railway Company

September 23, 2024