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March 5, 2018

VIA E-FILING

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

Re: 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:

The Kansas City Southern Railway Company hereby files, via e-filing, its "Reply To BNSF's Amended Petition." If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

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

REPLY TO BNSF'S AMENDED PETITION

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

March 5, 2018

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REPLY TO BNSF'S AMENDED PETITION

On January 12, 2018, BNSF Railway Company ("BNSF") filed a petition requesting the Surface Transportation Board (the "Board") to establish conditions of use and compensation for BNSF to directly serve a LyondellBasell ("Lyondell") facility in the Lake Charles, Louisiana area using the Rosebluff Lead ("Petition"). The Kansas City Southern Railway Company ("KCS") filed a motion to dismiss ("Motion") the Petition. BNSF replied on February 21, 2018.

BNSF's Reply amended its Petition in two substantive ways. First, it changed its map to show, without any evidence or factual backing, that the Montell Lead, which serves Lyondell and is owned by the Port of Lake Charles, "connects directly with the Rosebluff Lead" and "forms part of the Rosebluff Lead."¹ BNSF then merely changed the color of the lines on its previously submitted map to eliminate the fact that the original map showed that the Rosebluff Lead did not connect directly with the Montell Lead and was not "part of" the Rosebluff Lead.

¹ See BNSF-134, "BNSF's Reply to Kansas City Southern Railway Company's Motion to Dismiss BNSF's Petition" ("Reply") at 7, citing to the Verified Statement of Rob Reilly at 4, which was included in BNSF's Petition ("Petition VS").

Second, BNSF submitted, as Exhibit 1 to the Reply, a copy of BNSF-PR-4 filed on July 1, 1997 listing various “Two-To-One Customers As Of June 26, 1997” and listing one “Occidental Chemical” (“Occidental”) as being in West Lake Charles. BNSF’s counsel then claims without any factual verification or evidence that the “Occidental” facility listed in BNSF-PR-4 is the same Lyondell facility that BNSF now seeks to access. Reply at 7.

KCS hereby replies to BNSF’s amended factual assertions.² KCS’s verified evidence presented herein³ shows that the Montell Lead does not connect directly to the Rosebluff Lead. VS Nolte at 2, 6, & 7. There is a 0.40 mile piece of connecting track that connects the Montell Lead with the Rosebluff Lead and this connecting track is not “part of the Rosebluff Lead.” *Id.* BNSF has not shown any right to use this connecting track to access the Montell Lead. KCS will also show that the Lyondell facility is not the Occidental facility listed in BNSF-PR-4. Indeed, the predecessor owner of the current Lyondell facility, which is Montell, is not even listed on BNSF-PR-4 as a shipper to which BNSF was granted access. As such, BNSF has not yet shown that the Lyondell facility is a facility that qualifies for access under Decision No. 3.

Given the continued deficiencies in the Petition and that BNSF has the burden of proof to establish a prima facie case, the Board should either dismiss the Petition without prejudice to BNSF filing another Petition once BNSF can make the requisite showings, or, alternatively, the

² To avoid the prohibition against filing a reply to a reply at 49 CFR § 1104.13(a), KCS will not respond to the numerous misleading and incorrect legal assertions. KCS will limit its reply to the alleged new factual evidence that amended BNSF’s Petition. It is permissible to reply to new evidence presented in errata or via an amended application. Consolidated Rail Corporation -- Abandonment Exemption -- In Erie County, NY; Buffalo Crushed Stone, Inc. v. R.J. Corman Railroad Company/ Allentown Lines, Inc. and R.J. Corman Companies, AB-167 (Sub-No. 1164X), NOR 42028, 1998 STB Lexis 777 (STB served Oct. 7, 1998) (accepting reply to new evidence filed in response to a motion to dismiss).

³ To support its factual assertions herein, KCS attaches as Exhibit 1, the Verified Statement of Mr. Mark Nolte, Manager of Real Estate Field Services for the Real Estate and Industrial Development Department of KCS (“VS Nolte”).

Board should hold this proceeding in abeyance until BNSF supplements the record. The Board should not, until these questions are addressed, begin a proceeding to consider BNSF's Petition.⁴

I. THE MONTELL LEAD DOES NOT CONNECT DIRECTLY WITH THE ROSEBLUFF LEAD AND THE CONNECTING TRACK IS NOT PART OF THE ROSEBLUFF LEAD

BNSF's Petition and its Reply make two claims that are simply factually incorrect. First, it claims that the "Montell Lead . . . connects directly with the Rosebluff Lead and extends east for approximately 1.63 miles." Reply at 7 (citing to Reilly Petition VS at 4). It then makes another somewhat inconsistent statement in the next sentence when it says that the "Port-owned Montell Lead . . . connects directly to track owned jointly by UP and KCS that forms *part of* the Rosebluff Lead." Id. (emphasis supplied). Of course connecting *directly* to "the Rosebluff Lead" is not the same as connecting to an allegedly joint owned track that forms "*part of*" the Rosebluff Lead. If neither of these statements is accurate, which the KCS evidence submitted herein will show they are not, then BNSF has no right to use the connecting track at all, which argues for immediate dismissal.

BNSF claims Decision No. 3 granted it the right to get "on" and "off" the Rosebluff Lead so as to operate over connecting tracks in order to exercise its rights granted in Decision No. 3. Assuming that to be true,⁵ BNSF still needs the legal authority to operate over any spurs or industry tracks that connect with the Rosebluff Lead. It may obtain that right via a contract with

⁴ There is no indication in the statute that the 180 day time period applies to request terms and conditions, and it certainly doesn't apply until the Board accepts the Petition and sets a procedural schedule. If the Board does move forward with a procedural schedule, which it should not at this time, it should allow time for sufficient discovery and subsequent replies, rebuttals, and if necessary, sur-rebuttal filings. See e.g., New England Central Railroad, Inc. - Trackage Rights Order - Pan Am Southern, LLC, FD 35842 (STB served July 29, 2015 and June 7, 2016).

⁵ It is KCS's position that Decision No. 3 only granted BNSF the right to operate "over" the Rosebluff Lead to connect with industry tracks owned by CITGO so as to serve CITGO.

the owner of that track, as it proposes to do with the Port of Lake Charles with respect to the Montell Lead, or via Board ordered terminal trackage rights order if that track is carrier owned track and was not part of BNSF's previously granted Application. In this case, BNSF has not yet shown that it has obtained the right to operate over either the connecting track or the Montell Lead.

BNSF attempts to show that it does have the right to operate over the 0.40 mile connecting track. It did so by offering unverified evidence and changing the color of its map to show the connecting track as the same color as the Rosebluff Lead, removing the color that indicated that the connecting track was "Other & Industry Track," and calling the connecting track "part of" the Rosebluff Lead. Confusingly, BNSF also claimed that the Montell Lead connects directly with the Rosebluff Lead. In making these statements, BNSF is attempting to bring the connecting track at issue in this proceeding within its right to operate over or on the Rosebluff Lead and to get off that lead to serve industry tracks, such as the Montell Lead. Of course BNSF's statements are self-serving and are not backed by any evidence. More importantly, however, BNSF is wrong in its assertion that the Montell Lead connects directly to the Rosebluff Lead or that the connecting track forms "part of" the Rosebluff Lead.

The statement that the Montell Lead directly connects with the Rosebluff Lead is belied by BNSF's own statements. Indeed, just after claiming that the Montell Lead connects directly with the Rosebluff Lead, it then admits that it actually connects to what BNSF claims is a piece of connecting track that is jointly owned by KCS and UP; thus admitting that there is indeed a separate piece of connecting track. The fact that there is a connecting piece of track separate from the Rosebluff Lead was previously confirmed by Mr. Reilly's verified statement in the Petition. There, he says, in describing the operating plan, that the "BNSF job will . . . request

authority to make the approximately 0.40 mile move from the Montell Lead onto the Rosebluff Lead.” Reilly Petition VS at 8; see also, Petition, Exhibit A, pg. 3.

These statements clearly indicate that the Montell Lead does not directly connect with the Rosebluff Lead. They also clearly indicate that BNSF personnel understood that the 0.40 mile connecting track was not “part of” the Rosebluff Lead as they make a clear distinction between the Montell Lead, the connecting track, and the Rosebluff Lead. Of course, the irony is that BNSF’s previous map correctly indicated these facts before BNSF decided to change the color on this 0.40 mile section.

BNSF then claims, without factual evidence or verification that the connecting track is “part of” the Rosebluff Lead, presumably so that it can argue that Decision No. 3 applies to this “part” of the Rosebluff Lead. The connecting track is not part of the Rosebluff Lead and never has been, as BNSF personnel and the previous map fully understood. Attached as Exhibit 1 to this filing is the VS Nolte. Exhibit C to his statement are pages from KCS’s business records. These come from what is known as the SLIC book, which stands for Spot Location Inventory Control (“SLIC”).⁶ Exhibit C contains the relevant SLIC Book maps from 1983 showing maps 4 – 9.

In the 1983 maps, the Rosebluff Lead is designated as Track 700, which begins at the Rosebluff Yard (Map 4) and continues to Map 6, where it connects with Track 045 and then continues on as what is referred to on the map as the “Davison Lead.” On Map 9, it splits again, with Track 700 continuing on to what was then Davison Chemical while the Rosebluff Lead split

⁶ The SLIC book is used, in part, to determine how many cars can be spotted on each track in a shipper’s facility and indicates whether tracks are mainline tracks, spur tracks, industry tracks, or yard tracks. SLIC book maps are not drawn to scale and are not actual maps so much as they are schematic representations of tracks and facilities. VS Nolte at 4.

off (the Davison Lead and Rosebluff Lead are one and the same until the Davison Lead splits off and continues as Track 700 while the Rosebluff Lead continues on as Track 800). Track 800 is the track that eventually serves CITGO and other shippers as well, was the subject of BNSF's Application, and is noted on BNSF's Petition Map as the Rosebluff Lead. VS Nolte at 7.

On Map 6, Track 700, the Rosebluff Lead, has a switch connection at a connection with what is designated as Track 045. This track connects with several other tracks, including the Montell Lead. The Montell Lead is Track 064 in the 1983 SLIC Book (see Map 7). Track 045 is the 0.40 mile connection track that connects the Rosebluff Lead with the Montell Lead. Track 700 and Track 045 are clearly two different tracks. KCS does not consider these tracks as one and same. Id.

BNSF claims, again with no evidence, that Track 045 is jointly owned. SLIC books generally do not indicate track ownership. As such, ownership as of this date is unclear. Track 045 may be jointly owned by one of the shippers served by Track 045 along with KCS and UP, or by just KCS and UP, or just by KCS. VS Nolte at 7-8. At this stage, KCS is still researching ownership of Track 045.

The legal distinction between the Rosebluff Lead itself and the connecting track that connects the Montell Lead and the Rosebluff Lead is of course crucial. Decision No. 3 granted BNSF trackage rights "on" or "over" the Rosebluff Lead, not over any other tracks. Even if it granted BNSF the right to get on and off the Rosebluff Lead as argued by BNSF, Decision No. 3 still did not grant terminal trackage rights over connecting industry tracks, nor could it. BNSF's Application did not seek access over tracks connecting to the Rosebluff Lead, nor could it because industry tracks not owned by a carrier are not subject to the Board's terminal trackage rights authority. BNSF sought and was granted access on or over the Rosebluff Lead. No other

tracks or mileposts were ever mentioned. BNSF certainly didn't specifically mention or seek specific trackage rights over the 0.40 mile of connecting track at issue here. One will search high and low for any request to be granted terminal trackage rights over this particular piece of connecting track. As such, BNSF needs to obtain the legal right to operate over the connecting track and the Montell Lead for its Petition to even be valid.

The facts are clear, the connecting track is not the Rosebluff Lead, nor does it form a "part of" the Rosebluff Lead, just as it is not "part of" the Montell Lead. VS Nolte at 7-8. The connecting track is a separate track than the Rosebluff Lead. As BNSF's prior map (Exhibit 1, pg. 4) correctly indicated, it was and is "Other & Industry" track. BNSF, like it admits it has to do with respect to the Montell Lead, will need to obtain contractual authority or some other legal authority to operate over this connecting track. Until it has obtained legal authority to operate over the Montell Lead and the connecting track, the Petition should be dismissed. Otherwise, the parties will be undertaking a proceeding to establish terms and conditions for BNSF access that BNSF may never be able to implement.

II. THE LYONDELL FACILITY IS NOT THE OCCIDENTAL FACILITY LISTED IN BNSF-PR-4

In its Petition, BNSF argued that Decision No. 3 granted BNSF the right to serve other shippers besides CITGO and that the Lyondell facility was such a facility. KCS does not concede that the Board could have legally expanded its decision to include shippers other than CITGO. Even if it could, however, KCS argued in its Motion that BNSF would still need to establish that Lyondell is (1) a shipper that was in existence at the time of the UP/SP merger and is entitled to receive BNSF access under the UP/SP decision and the "Lake Charles Condition;"⁷

⁷ These are important factors. See, e.g., UP/SP, Decision No. 106, slip op. at 7-9 (STB served Dec. 20, 2013) (UP's promise during merger to keep facility open to reciprocal switching did not

and (2) that Lyondell is located in “West Lake Charles” as opposed to “Westlake,” which was not within even a broad reading of BNSF’s Application nor mentioned in Decision No. 3.

Making BNSF establish these factors was consistent with Board precedent in which the party seeking a change has the burden of proof to establish the basic elements of a prima facie case.⁸

BNSF responded to this burden by producing a copy of few pages from a prior BNSF filing during the UP/SP oversight proceedings – BNSF-PR-4, attached as Exhibit 1 to the BNSF Reply. This Exhibit purportedly shows a list of new “2-to-1” customers that BNSF was given access to as a result of the UP/SP merger. The produced list includes “2-to-1” shippers in “West Lake” and “West Lake Charles.” One of those shippers is “Occidental,” listed as being in West Lake Charles. BNSF then makes the claim that it has had reciprocal switching access to the Lyondell facility since the merger and cites to Exhibit 1’s listing of Occidental as establishing its right to access the Lyondell facility, drawing the conclusion that the Occidental facility on the list is the same facility as the Lyondell facility because Occidental was a predecessor-in-interest to the Lyondell facility.

transfer to new buyer when the facility was sold five years after the merger and granting access to BNSF would “effectively increase rather than preserve the pre-merger level of competition in Modesto.”)

⁸ See, e.g., UP/SP, Decision No. 11, slip op. at 3 (STB served Jan. 23, 1998) (Noting that it was appropriate to put the burden on BNSF to present evidence regarding shipper eligibility because “[p]ertinent 2-to-1 information should be available to BNSF from its supporting shipper, which should be eager [to provide such information] to gain access to an additional rail carrier.”); Rapid City, Pierre & Eastern Railroad, Inc. – Acquisition And Operation Exemption – Dakota, Minnesota & Eastern Railroad Corporate; Genesee & Wyoming Inc. – Continuance In Control Exemption – Rapid City, Pierre & Eastern Railroad, Inc., FD 35799; FD 35800 (STB served May 14, 2015) (Petitioner has burden of proof); and Gen. Procedures For Presenting Evidence in Stand-Alone Cost Rate Cases, 5 S.T.B. 441, 445-46 (2001) (explaining that “the party with the burden of proof on a particular issue must present its entire case-in-chief in its opening evidence”).

As discussed in Mr. Nolte's verified statement, he has researched the ownership and history of the Lyondell facility. His conclusion is that the Lyondell facility is not the same as the Occidental facility that was listed in BNSF-PR-4. VS Nolte at 6. His research does show that the Lyondell facility is in West Lake Charles, a point that KCS now concedes,⁹ but the Lyondell facility is a former Montell facility.¹⁰ Montell is not listed in BNSF's Exhibit 1 as a facility that BNSF gained access to in West Lake Charles as a result of the UP/SP merger. This proves that BNSF has not yet made a prima facie case that the Lyondell facility is even entitled to BNSF access under the Lake Charles condition.

As discussed in Mr. Nolte's verified statement, the real property and facility that is today Lyondell was, in 1983, owned by Hercules Inc. VS Nolte at 4-6. His research indicates the Lyondell facility that is the subject of BNSF's Petition was owned by Hercules, then it was acquired by Himont, U.S.A., Inc. ("Himont"), a Delaware corporation, and Himont became Montell, and Montell became Basell. Basell matches the owner's name shown on the Calcasieu Parish GIS website information in Exhibit A to Mr. Nolte's verified statement.

These changes are confirmed by two 2005 Calcasieu Parish Recording Pages included in Exhibit 2 in this KCS filing. These pages confirm that Himont became Montell in 1995 and that Montell became Basell in 2000. Basell merged with Lyondell in 2007, according to Lyondell's website. See <https://www.lyondellbasell.com/en/about-us/history/company-history-2017-20001/>. The Lyondell facility at issue in the Petition was not the Occidental facility listed in BNSF-PR-4.

⁹ Even if Occidental had a corporate relationship to a Lyondell predecessor, the Occidental facility in West Lake Charles listed in BNSF-PR-4 is not the Lyondell facility at issue in this proceeding.

¹⁰ Given that the lead is known as the Montell Lead, this makes logical sense as well.

Given that the Lyondell facility BNSF seeks to serve is not the Occidental facility listed in BNSF's Reply, KCS's prior points and questions remain. The Petition, even as amended, contains no evidence that the Lyondell facility is a facility entitled to BNSF access under the Lake Charles Condition. Was this facility "open" to "all of KCS, SP, and UP"? Was this a captive facility in 1996? If the facility was either captive or served only by SP and KCS prior to the merger, why is it now in the public interest for it to have three carrier access (UP and BNSF via direct service and KCS via reciprocal switch) when other shippers are only entitled to two carrier access? Does BNSF have the legal or contractual authority to operate over the connecting track and the Montell Lead? There is still no evidence in the record of this proceeding or in the Petition itself addressing these basic questions. Yet, answers to these questions are necessary for the Board to move forward on the basis that Lyondell is covered by Decision No. 3 in the first place and that BNSF would even have the right to serve the Lyondell facility.

CONCLUSION

In response to KCS's Motion, BNSF in its Reply addressed, but did not fully answer, many, but not all, of the various legal and factual questions raised by KCS. To avoid filing a reply to a reply, KCS will not reply to those legal arguments. On two of the most important factual points raised by KCS -- BNSF's ability to use the 0.40 mile connecting track and the Montell Lead and the eligibility of the Lyondell facility under Decision No. 3 -- BNSF produced amended factual information. This information was not verified. Being new information and amended facts, KCS has responded accordingly.

Upon examination of this amended information, it is clear that BNSF is legally and factually incorrect in its assertions. The 0.40 mile connecting track is not "part of" the Rosebluff Lead nor does the Montell Lead connect directly with the Rosebluff Lead. Likewise, the

Lyondell facility is not the Occidental facility to which BNSF claims it was granted access. The Lyondell facility is not even listed in BNSF's own filing as a facility for which BNSF was granted access. It appears that BNSF believes that the Board should just move on to setting terms and conditions because BNSF desires to provide direct access and the Board should just give it to them regardless of the legal and factual circumstances.¹¹

Even as amended, the Petition fails to establish a prima facie case. It still does not address whether the Lyondell facility was even entitled to ask for BNSF service under Decision No. 3. It still does not address whether BNSF has a legal or contractual right to use industry tracks to get off the Rosebluff Lead and operate over those tracks in order to serve Lyondell. It does not provide evidence of a contractual or legal right to use the Montell Lead. BNSF cannot skip these necessary elements to establishing a prima facie case and the Board should not allow them to.

Given the continued deficiencies in the Petition, the Board should either dismiss the Petition without prejudice to BNSF filing another Petition once BNSF can make the requisite showings, or, alternatively, the Board should hold this proceeding in abeyance until BNSF supplements the record. The Board should not, until these questions are addressed, begin a proceeding to consider BNSF's Petition.

¹¹ It is important to recall that like KCS, BNSF already has competitive access to the Lyondell facility via a reciprocal switch from UP. Indeed, from KCS's internal analysis, BNSF most likely has the majority of traffic to/from that facility. There is no existing competitive necessity for direct BNSF access and certainly no urgency to BNSF's request for direct access.

Respectfully submitted,

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March 5, 2018



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Attorneys for The Kansas City Southern
Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the The Kansas City Southern Railway Company's Reply to BNSF Amended Petition in the above-captioned matter was served by first-class mail, postage prepaid, or by a more expeditious manner, this 5th day of March, 2018, on counsel for BNSF Railway Company, Union Pacific Railroad Company, and all other parties of record.



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

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
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REPLY TO BNSF'S AMENDED PETITION

EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
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REPLY TO BNSF'S AMENDED PETITION

VERIFIED STATEMENT OF MARK NOLTE

My name is Mark Nolte. I am the Manager of Real Estate Field Services for the Real Estate and Industrial Development Department of The Kansas City Southern Railway Company ("KCS").

Summary: I was asked by the KCS Legal Department to determine whether KCS's records and other information available to me show that the LyondellBasell ("Lyondell") site indicated on Exhibit 1, page 4, to BNSF Railway Company's ("BNSF's") January 12, 2018 petition ("Petition") in the above-captioned matter was operated in 1997 by Occidental Chemical Corporation ("Occidental"), as claimed by BNSF in its February 21, 2018 filing.¹ My research shows that it was not. I was also asked to review the Spot Location Inventory Control ("SLIC") book from 1983 that we had in our archive, which books are used to determine track designations and facilitate car spotting, in order to determine whether KCS has ever treated a

¹ See BNSF-134, "BNSF's Reply to Kansas City Southern Railway Company's Motion to Dismiss BNSF's Petition" ("Reply") at 7.

0.40 mile of connecting track that connects the Rosebluff Lead with the Montell Lead as "part of" either the Rosebluff Lead or the Montell Lead. My conclusion is that this is industry track that is not part of the Rosebluff Lead or the Montell Lead. At this time, it is unclear who owns this connecting track.

Background: I joined KCS in 2015. My responsibilities for KCS involve, among other things, managing surveys and title searches to determine KCS's title to real estate. In that role I have performed and managed surveys of KCS property and worked with many title companies on providing information about the exact location of and titles to real estate. My office is located at KCS's headquarters, 427 West 12th Street, Kansas City, Missouri.

I have been a licensed surveyor in Missouri for over 25 years. I have also been the official County Surveyor for Lafayette County, Missouri, and the Deputy County Surveyor for neighboring Saline County. My background includes many educational courses in surveying and related legal issues.

I understand that in the above-captioned proceeding, BNSF is asking the Surface Transportation Board (the "Board") to establish terms for BNSF to use properties owned by KCS, Union Pacific Railroad Company ("UP"), and others to operate BNSF's own trains to a facility operated by Lyondell on a track referred to by BNSF as the Montell Lead in West Lake Charles, Louisiana. I have seen a copy of BNSF's January 12, 2018 request to the Board in this proceeding containing a map at page 4 of BNSF's Exhibit 1 ("BNSF's Petition Map") that shows the location of the involved Lyondell facility. I have attached, as Exhibit A to my statement, an aerial overview of the same location.

I further understand that as part of their Reply, BNSF stated,

[T]he LyondellBasell facility has been open to BNSF service via UP reciprocal switch pursuant to the Lake Charles Condition since BNSF first started such service to West

Lake Charles customers in 1997. *See UP/SP Merger Proceeding*, BNSF's Fourth Quarterly Progress Report, Att. 12 at 5 (BNSF-PR-4, filed July 1, 1997) (showing Occidental Chemical, a predecessor-in-interest to LyondellBasell, at West Lake Charles as a new customer to which BNSF gained access as a result of the UP/SP merger) (relevant excerpts attached hereto as Exhibit 1).

Reply at 7.

Ownership of the Lyondell Site: I was asked by the KCS Legal Department to determine whether KCS's records or other information available to me show that the Lyondell location indicated on the BNSF Petition Map and as shown on my Exhibit A attached hereto was previously owned by Occidental. According to the KCS's records and information provided to me by a title company in the Lake Charles, Louisiana area, it was not.

One place that I inquired about the ownership of the current Lyondell site shown on my Exhibit A was with Mayo Land Title Co., Inc. ("Mayo"), a Lake Charles, Louisiana title company with which I have previously dealt. I provided them with a copy of my Exhibit A. This aerial was taken from the Calcasieu Parish Geographic Information System website, <http://cppj.totaland.com/>. The website allows one to zoom in on particular parcels, bordered in yellow, and to click on the parcel to obtain further information, shown at the left side of Exhibit A. The aerial that I attach as Exhibit A matches the Lyondell site included in BNSF's Petition Map.

I sent the aerial attached in Exhibit A to Mayo, and asked them to provide me with title information on the parcel. They quickly provided me an electronic copy of a 1985 deed, attached hereto as Exhibit B. The deed shows the parcel in question being acquired by Himont, U.S.A., Inc. ("Himont"), a Delaware corporation. In a brief cover e-mail, Mayo also stated that there had been a name change from Himont to Montell USA, and from Montell USA to Basell

USA. Basell USA matches the owner's name shown on the Calcasieu Parish GIS website information in Exhibit A.

I also looked through some historical business records of KCS for information on the current Lyondell site to determine what those records said, if anything, about historical ownership of the current Lyondell site and to determine which tracks served that site. One place that I looked was the SLIC book from 1983 that we had in our archives.² I have attached copies of relevant pages of that SLIC book as Exhibit C hereto.

The second page of Exhibit C is the overview, which is the key to the SLIC book maps for an area identified as West Lake, LA. Each of the rectangles on the page corresponds to a map of a section of the area. In looking at that page, I noted the name Hercules on Map 7 corresponding generally to the area shown on my Exhibit A as the Lyondell site. I have included Maps 4 through 9 in Exhibit C.

Map 6 shows the south end of Rosebluff Yard, indicated by six tracks coming together. Two of those tracks extend south of the yard (toward the top of the page as the SLIC book page is oriented in Exhibit C) until Track 027 merges into Track 700 shortly before Maple Fork. Track 700 then continues south on the map until it crosses Bayou d'Inde and then continues toward a location labeled "To Firestone." Another track, labeled 045, and tracks 062 and 064 which spring off of it, continue "To Map 7 & 8 – Hercules & Harbor Terminal Bulk".

From my occasional review of SLIC books, I recognize that track numbering indicates, among other things, whether a track is considered a main track or a spur, siding yard or industrial

² The SLIC book is used, in part, to determine how many cars can be spotted on each track in a shipper's facility and indicates whether tracks are mainline tracks, spur tracks, industry tracks, or yard tracks. From my experience, SLIC book maps are not drawn to scale and are not actual maps so much as they are schematic representations of tracks and facilities

track. In this instance, it appears that the 700 designation on the track that runs continuously from Rosebluff Yard across Bayou d'Inde and toward Firestone, is the Rosebluff Lead, while tracks 045, 062 and 064 are ancillary tracks of some sort. I looked through the 1983 SLIC book for a further explanation of the track numbering, but did not find one.

Map 7 then shows in the lower corner those same tracks 700 and 045 splitting south of Bayou d'Inde. Track 045 continues, crossing a dotted line labeled "St. Rte 108" and apparently ends in a number of other tracks in an area labeled "Hercules Inc. ("Hercules"). It is my conclusion from looking at the SLIC book maps in Exhibit C that the area labeled "Hercules Inc." is the same area labeled on BNSF's Petition Map as Lyondell. This conclusion is supported in part by the fact by that "St. Rte. 108" appears to match "Hwy. 108" on BNSF's Petition Map. This conclusion is further bolstered by the fact that both SLIC book Map 7 and BNSF's Petition Map show a group of tracks on the site lying parallel to St. Rte. 108/Hwy. 108 and another group of tracks splitting off basically perpendicular to that.

Map 8 shows the track that is labeled Track 064 extending further and terminating in what is labeled Lake Charles Harbor Bulk Terminal. This indicates that Track 064 is what is identified on BNSF's Petition Map as the Montell Lead, and further bolsters the conclusion that the location labeled on Map 7 as Hercules, is the site labeled Lyondell on BNSF's Petition Map.

Using the information from the SLIC book, which labeled the site BNSF seeks to access as Hercules Inc., and also noting the indication from the Calcasieu Parish GIS that the site is owned by Basell USA, I looked at KCS industry track records for something showing those two names. That search yielded an industry track file labeled File No. 739-20, Part II, West Lake, LA, Hercules Powder Company[,], Hercules Incorporated[,], Himont U.S.A., Inc.[,], Montell USA, Inc.[,], Basell Plastics. The file contains records from 1960 through 2009, beginning with an

October 11, 1960 Industry Track Agreement ("ITA") between KCS, the Texas and New Orleans Railroad Company and Hercules Powder Company ("HPC"), a Delaware corporation. The agreement covers a proposed 4,300 feet of spur track to serve the Hercules' plant. The file also contains –

- A 1964 amendment to the ITA, among KCS, Southern Pacific Company ("SP") and HPC.
- A May 1, 1967 Supplemental Agreement among KCS, SP and Hercules, a Delaware corporation.
- A 1971 Supplemental Agreement among KCS, SP, and Hercules.
- An Assignment dated May 13, 1985, assigning the ITA, as supplemented and amended, from Hercules to Himont.
- A June 15, 1995 Supplement which substitutes Montell USA, Inc. ("Montell") for HPC as a party to the ITA.
- A January 28, 1997 letter from KCS to SP stating that the June 15, 1995 Supplement is ready for Montell's signature
- An August 3, 1999 letter from Cathy Rosenkranz, Supervisor, Transportation Pricing of Montell Polyolefins/Montell North America, Inc., to KCS with a signed copy of the June 15, 1995 Supplement.
- A copy of the same Map 7 that is contained in Exhibit C hereto.

From these documents, particularly the 1995 Supplement and the 1997 and 1999 letters concerning execution of same, I conclude that in 1997, the facility covered by the ITA was operated by Montell, Inc., not Occidental.

In addition to determining that the Lyondell facility was not an Occidental facility, I was also asked to review the SLIC book and our records to determine if the Montell Lead connected directly with the Rosebluff Lead. My conclusion is that it does not. There is a 0.40 mile connecting track designated as Track 045 in the SLIC book that connects the Rosebluff Lead and the Montell Lead. I do not consider this track as "part of" the Rosebluff Lead (Track 700) or the Montell Lead (Track 064). It is a separate track.

In the 1983 SLIC book maps, the Rosebluff Lead is designated as Track 700, which begins at the Rosebluff Yard (Map 4) and continues to Map 6, where it connects with Track 045 and then continues on as what is referred to on the map as the "Davison Lead." On Map 9, it splits again with Track 700 continuing on to what was then Davison Chemical while the Rosebluff Lead (the Davison Lead and Rosebluff Lead are one and the same until the Davison Lead splits off) continues on as Track 800. Track 800 is the track that eventually serves CITGO and other shippers as well, was the subject of BNSF's Application, and is noted on BNSF's Petition Map as the Rosebluff Lead.

On Map 6, Track 700, the Rosebluff Lead, has a switch connection with what is designated as Track 045. This Track 045 connects with several other tracks, including what is called the Montell Lead in this proceeding. The Montell Lead is Track 064 in the 1983 SLIC book (see Map 7). Track 045 is the 0.40 mile connection track that connects the Rosebluff Lead with the Montell Lead. Track 700 and Track 045 are clearly two different tracks. KCS would not consider those tracks as the same track and Track 045 is not "part of" the Rosebluff Lead.

KCS would consider Track 045 to be industry track, whether owned by KCS or a shipper. Unfortunately, the SLIC books do not indicate ownership of track. I could not find a legend to differentiate what was railroad-owned track from industry-owned track for the 1983 SLIC book. For example, the tracks on Map 7 (Exhibit C) that appear to be on the Hercules site have numbers similar to Track 045; for example, 046, 047, etc. From File No. 739-20, Part II, it appears that tracks such as Track 046 and 047 may be industry-owned. Accordingly, Track 045 may be jointly owned by one of the shippers served by Track 045 along with KCS and UP, or by just KCS and UP, or just by KCS. At this stage, I am still researching ownership of Track 045.

Regardless of ownership, KCS would not consider Track 045 to be the Rosebluff Lead nor is it “part of” the Rosebluff Lead or “part of” the Montell Lead. It is a separate, connecting track.

VERIFICATION

I, Mark Nolte, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing verified statement.

Executed on this 5th day of March, 2018 at KANSAS CITY, MISSOURI.



Mark Nolte
Manager of Real Estate Field Services,
Real Estate and Industrial Development Department
The Kansas City Southern Railway Company

Exhibit A

Internet Explorer
CPPJ - GIS Mapping Application | Ca...
CPPJ
MAP ANALYST
esri
0 300 600ft
Lat 30.191, Lon -93.334, Elevation: 12 feet

DETAILS FOR PARCEL
01096028

General
Valuations
Tax Breakdown

PARCEL LOCATION(S)
CITIES SERVICE HWY
SUBDIVISION(S)
NO SUB

CONTACT INFORMATION
PARCEL OWNER (S)
BASELL USA INC
C/O CUMMINGS WESTLAKE
LLC
12837 LOUETTA RD STE 201
CYPRESS TX 77429-0000

ASSESSED VALUES AND STATUS
ASSESSMENT STATUS: ACTIVE
ASSESSED VALUE \$143,110.00
HOMESTEAD EXEMPTION \$0.00
TAXABLE VALUE \$143,110.00

OTHER ATTRIBUTES OF INTEREST
NAME BASELL USA INC
PARCEL LOCATION CITIES SERVICE HWY
WARD 4

Exhibit B

1847-147

~~CONVEYANCE~~

OFFICE OF CLERK OF COURT

1995 JAN -9 AM 11: 39

STATE OF LOUISIANA

CALCASIEU PARISH, LOUISIANA
ACT OF SALE AND GRANT OF
SERVITUDE

PARISH OF CALCASIEU

1831548

KNOW ALL MEN BY THESE PRESENTS that:

ELAINE PUJO REILY, widow of William B. Reily, Jr.,
a resident of Orleans Parish, Louisiana,

ELOISE PUJO MOLTER GROVES, married to and living
with K. Deane Groves, a resident of Chester County,
Pennsylvania,

BENNETT A. MOLTER, JR., married to and living with
Jetta Hansen Molter, a resident of St. Landry
Parish, Louisiana, and

W. BOATNER REILY, III, married to and living with
Wendy Griswold Reily, a resident of Jefferson
Parish, Louisiana,

hereinafter, whether one or more, referred to as Vendor, who declared
that said Vendor does by these presents grants, bargain, sell,
convey, transfer, assign, set over, abandon and deliver with all
legal warranties and with full substitution and subrogation in and
to all the rights of actions of warranty which said Vendor has or
may have against all preceding owners and vendors unto:

HIMONT, U. S. A., INC., a Delaware corporation having
an office mailing address 1313 N. Market Street,
Wilmington, Delaware, 19894, authorized to do and
doing business in the State of Louisiana,

the following described property situated in Calcasieu Parish,
Louisiana, to-wit:

The North 1942.7 feet of the Northeast Quarter of
Section 18, Township 10 South, Range 9 West, South-
western Land District of Louisiana, being more fully
described as follows:

Beginning at the Northeast corner of Section 18,
Township 10 South, Range 9 West, Southwestern Land
District of Louisiana, same being marked by a concrete
monument,

Thence, South 89°52'15" West 2664.7 feet to the
North Quarter Section corner of said Section 18;

Thence, South 0°05'30" East with the North-South
centerline of said Section 18, 1942.7 feet to the
Northwest corner of land conveyed by Cities Service
Refining Corporation to Hercules Powder Company;

Thence, North 89°52'15" East 161.60 feet along the
north boundary of land conveyed by Cities Service

Calcasieu, Calpel

Refining Corporation to Hercules Powder Company and the south boundary of lands of Mrs. Elaine P. Reily, et al, to a concrete monument on the East right-of-way line of State Highway No. 108; thence, continuing on North 89°52'15" East along the North Boundary of lands conveyed by Cities Service Refining Corporation to Hercules Powder Company and the South Boundary of Mrs. Elaine P. Reily, et al, property, for a total distance of 2671.90 feet to the Northeast corner of the lands conveyed by Cities Service Refining Corporation to Hercules Powder Company and a concrete monument on the East line of said Section 18;

Thence, North 0°18'18" West with the said East Section line of Section 18 a distance of 1942.7 feet, more or less, to the Northeast corner of Section 18, same being the concrete monument at the point of commencement. (This description contains 119.00 acres, of which amount 8.01 acres is within the Right-of-Way of State Highway No. 108; and 2.58 acres is located within the Right-of-Way of State Highway No. 1134 and 2.70 acres is located within the Right-of-Way granted the Lake Charles Harbor and Terminal District of Calcasieu Parish, Louisiana, being Parcel No. 1A in that certain instrument filed June 28, 1966, recorded in Conveyance Book 963, page 607 of the records of Calcasieu Parish).

In accordance with plat of survey entitled "Property Survey" of F. Shutts' Sons, Civil Engineers, dated January 6, 1960 (Rev. January 26, 1960; Rev. February 3, 1960), attached to that certain instrument entitled "PLANT SITE LEASE AND OPTION FROM PUJO HEIRS TO HERCULES" filed March 14, 1968, in Conveyance Book 1027, page 300 of the records of Calcasieu Parish, made a part hereof by reference.

Vendor reserves all of the oil, gas and other minerals under the property herein conveyed together with the right personally or through lessees or contractors to explore, drill for and produce oil, gas and other minerals therefrom, provided that such operations shall be so conducted by directional drilling or otherwise as to not interfere with the exercise by HIMONT U.S.A., Inc., its successors or assigns, of the purposes for which the lease of January 6, 1960, from Pujo Heirs to Hercules Powder Company was granted, the lease being recorded in the records of Calcasieu Parish, Louisiana, in Conveyance Book 1027, page 300, a memorandum of the lease being recorded in Conveyance Book 747, page 355, and amendments to the lease being recorded in Conveyance Book 964, page 8, and Conveyance Book 1163, page 520.

Additionally, Vendor grants a servitude or right of

drainage and disposal for storm and surface water, and for plant process water which complies with applicable environmental protection standards imposed by the Federal and/or State governments and is treated in accordance with any and all applicable permit requirements and pursuant to any and all applicable permits issued by the United States Environmental Protection Agency and the State of Louisiana, Department of Environmental Quality, to maintain and improve natural drainage, more fully described as follows:

An existing drainage outfall structure or ditch both natural and artificially constructed, across, over and through the North Half of the Southwest Quarter and the Northwest Quarter of the Southeast Quarter of Section 17, Township 10 South, Range 9 West, Southwestern Land District of Louisiana, (being property belonging to Vendor) said Drainage Structure or Ditch being located approximately as follows:

Beginning at the West line of Section 17 at a point 550 feet, more or less, North of the Southwest corner of the Northwest Quarter of the Southwest Quarter of Section 17;

Thence, North 89°40' East 1730 feet, more or less;

Thence, North 87°20' East 340 feet, more or less;

Thence, North 59°30' East 700 feet, more or less to an Open Pond;

Thence, South 62° East through said Pond approximately 800 feet to the Northwest boundary of Tract B as described in that certain "TERMINAL SITE AND SERVITUDES LEASE" recorded in the records of Calcasieu Parish, Louisiana, bearing file No. 1776031, recorded in Conveyance Book 1773, page 497; thence, in a southerly direction approximately 800 feet to the Calcasieu River or Ship Channel which said servitude or right of drainage and disposal shall be in favor of HIMONT U. S. A., Inc., its successors or assigns, in favor of the following described property:

1. The property herein conveyed; and
2. A tract of land containing 64.55 acres, shown as Tracts 1 and 2 and 3, in the East Half of Section 18, Township 10 South, Range 9 West, Southwestern Land District of Louisiana, as more fully described in the Act of Sale from Cities Service Refining Corporation to Hercules Powder Company, dated May 18, 1960, recorded under file No. 807673 of the Conveyance Records of Calcasieu Parish, Louisiana, which together form one contiguous tract of land;

all as shown on the plat attached to that certain instrument entitled "TERMINAL SITE AND SERVITUDES LEASE AND OPTION FROM PUJO HEIRS TO HERCULES", recorded in the records of Calcasieu Parish, Louisiana,

bearing file No. 1776031, recorded in Conveyance Book 1773, page 497, identified as "Topographic and Drainage Survey" dated January 6, 1960 (Rev. January 26, 1960; Rev. February 3, 1960) made a part hereof by reference.

Vendor shall have the right to alter and relocate the Servitude or any part thereof in any manner or to any location it may desire provided that: (a) no such alteration or relocation shall impede the drainage of water through the Servitude, not even temporarily; (b) such alteration or relocation shall be lawful under any governmental permit necessary for Purchaser's use of the drainage servitude, provided that Purchaser shall promptly exercise due diligence to obtain an amended permit or new permit removing any such impediment to the alteration or relocation; (c) the place of beginning of the Servitude shall not be moved or changed from its present location at the West line of Section 17; (d) the Servitude shall end in the Calcasieu River or Ship Channel; (e) any such alteration or relocation shall be made at no cost to Purchaser. Within ninety (90) days after the completion of any relocation, Vendor shall furnish Purchaser a survey showing the new location of the Servitude or the relocated portion thereof and both parties shall execute all recordable instruments as may be reasonably required by either party to depict and evidence such new location. The provisions of this paragraph shall inure to the benefit of and shall be binding upon the parties, their heirs, successors and assigns.

TO HAVE AND TO HOLD the above described property and servitude unto the said Purchaser, Purchaser's successors and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of FIVE HUNDRED FORTY ONE THOUSAND FIVE HUNDRED EIGHTY SEVEN AND 21/100 (\$541,587.21) DOLLARS cash, which the said Purchaser has well and truly paid, in ready and current money to the said Vendor, who hereby acknowledges receipt thereof and grants full acquittance and discharge therefor.

All State taxes up to and including the taxes due and exigible in 1984 and all Parish taxes up to and including the taxes due and exigible in 1984 are paid; taxes due for 1985 are to be paid by Purchaser.

The property herein conveyed is not subject to any encumbrance whatever, except rights of way, servitudes and/or easements recorded prior to November 14, 1984.

IN WITNESS WHEREOF, this instrument is signed by the

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parties hereto, as set forth hereafter.

THUS DONE AND SIGNED by Elaine Pujo Reilly, in the presence of the undersigned competent witnesses at New Orleans, Louisiana, on this 7 day of Jan., 1985.

WITNESSES:

Louise Sciacca
Gloria S. Richardson

Elaine Pujo Reilly
ELAINE PUJO REILLY

THUS DONE AND SIGNED by Eloise Pujo Molter Groves, in the presence of the undersigned competent witnesses at Willistown, TWP, Chester County, Pennsylvania, on this 31st day of Dec., 1984.

WITNESSES:

Brenda L. Miller
Elizabeth O. Herpidge

Eloise Pujo Molter Groves
ELOISE PUJO MOLTER GROVES

THUS DONE AND SIGNED by Bennett A. Molter, Jr., in the presence of the undersigned competent witnesses at New Orleans, Louisiana, on this 5 day of Jan., 1985.

WITNESSES:

Louise Sciacca
Gloria S. Richardson

Bennett A. Molter, Jr.
BENNETT A. MOLTER, JR.

THUS DONE AND SIGNED by W. Boatner Reilly, III, in the presence of the undersigned competent witnesses at New Orleans, Louisiana, on this 7 day of Jan., 1985.

WITNESSES:

Louise Sciacca
Gloria S. Richardson

W. Boatner Reilly, III
W. BOATNER REILLY, III

STATE OF LOUISIANA :

PARISH OF ORLEANS :

On this 7 day of January, 198 5, personally came and appeared ELAINE PUJO REILLY, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed same as her free act and deed.

WITNESS my official signature at New Orleans, Louisiana, on the day, month and year first above written.


NOTARY PUBLIC

MICHEL O. PROVOSTY

Notary Public, Parish of Orleans, State of La.
My Commission is issued for life.

STATE OF PENNSYLVANIA :

COUNTY OF CHESTER :

On this 21st day of Dec, 198 4, personally came and appeared ELOISE PUJO MOLTER GROVES, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed same as her free act and deed.

WITNESS my official signature at Paris, Pennsylvania, on the day, month and year first above written.


NOTARY PUBLIC

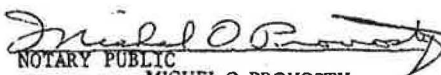
VIRGINIA C. H. CO. P. S. NOTARY PUBLIC
WILLISTOWN TWP. CHESTER CO. N.Y.
MY COMMISSION EXPIRES SEPT. 5, 1985
Member, Pennsylvania Association of Notaries

STATE OF LOUISIANA :

PARISH OF Orleans :

On this 5 day of January, 198 5, personally came and appeared BENNETT A. MOLTER, JR., to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed same as his free act and deed.

WITNESS my official signature at New Orleans, Louisiana, on the day, month and year first above written.


NOTARY PUBLIC

MICHEL O. PROVOSTY

Notary Public, Parish of Orleans, State of La.
My Commission is issued for life.

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STATE OF LOUISIANA

PARISH OF ORLEANS

On this 7 day of January, 1985, personally came and appeared W. BOATNER REILY, III, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed same as his free act and deed.

WITNESS my official signature at New Orleans, Louisiana, on the day, month and year first above written.

Michel O. Provosty
NOTARY PUBLIC
MICHEL O. PROVOSTY
Notary Public, Parish of Orleans, State of La.
My Commission is issued for life.

Exhibit C

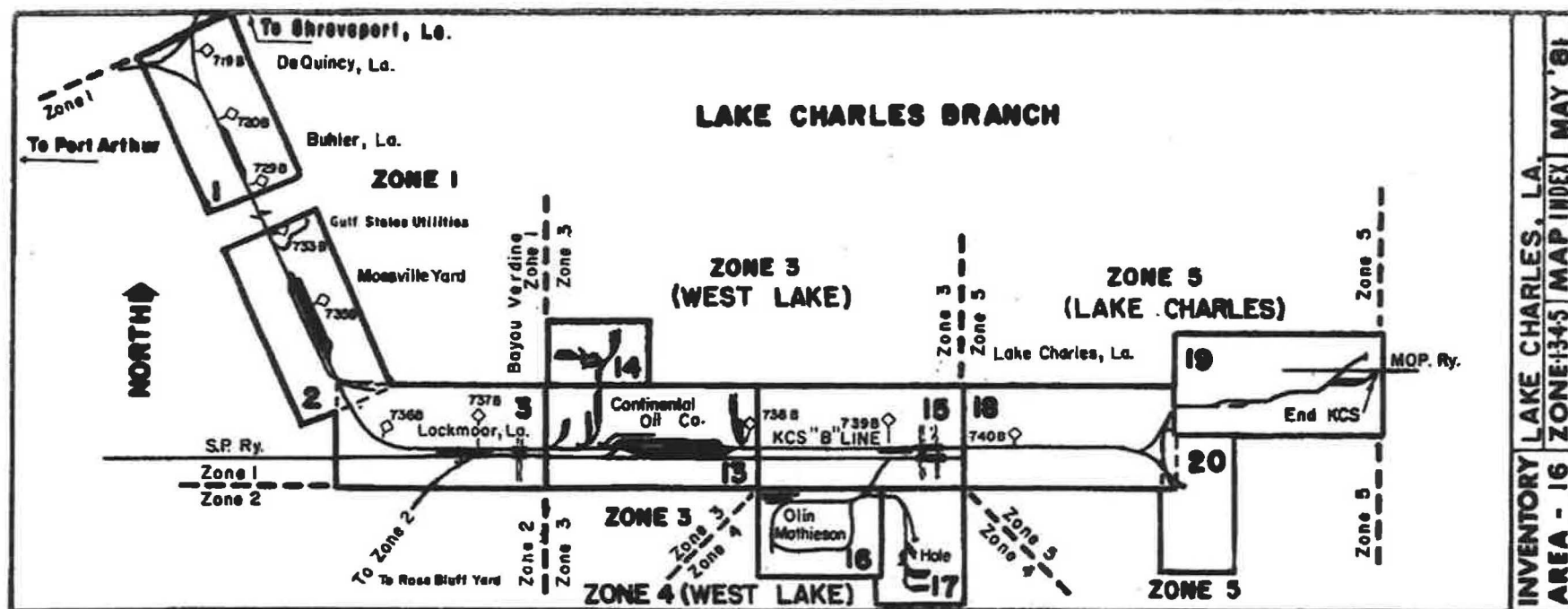
Safety



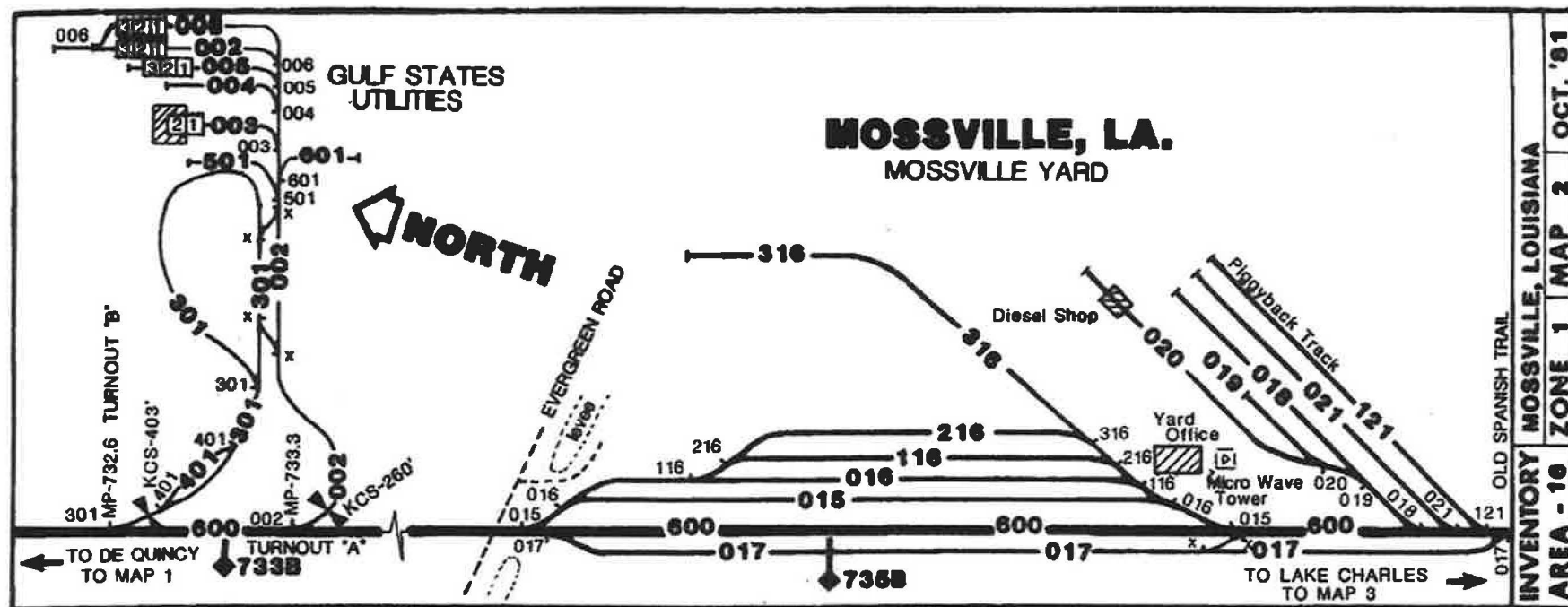
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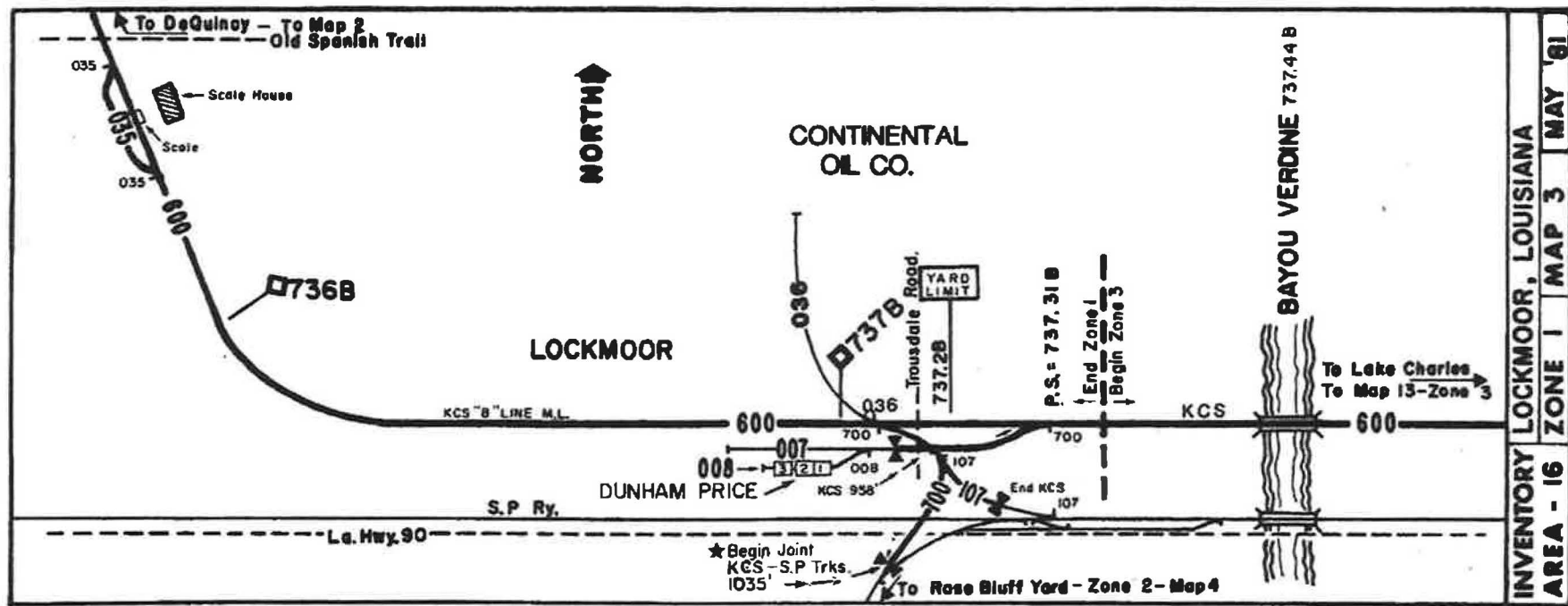
SPOT **L**OCATION **I**NVENTORY **C**ONTROL

SLIC BOOKLET MAPS

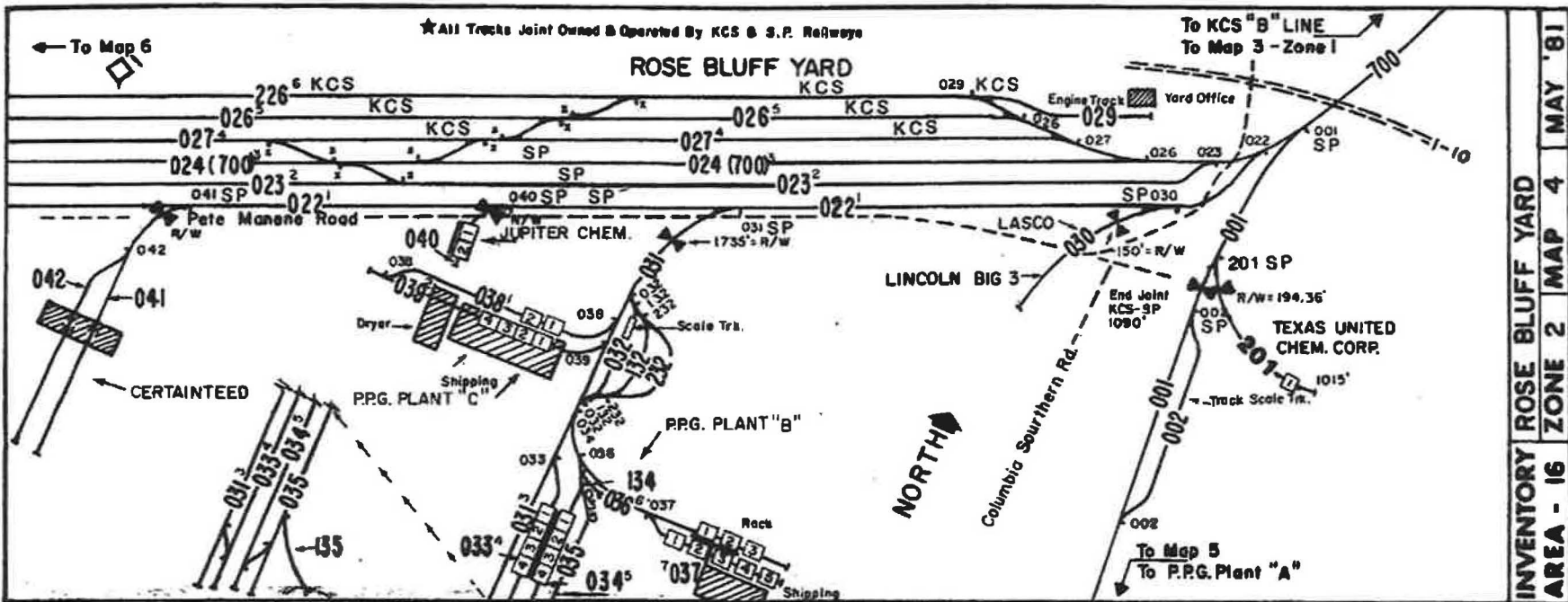


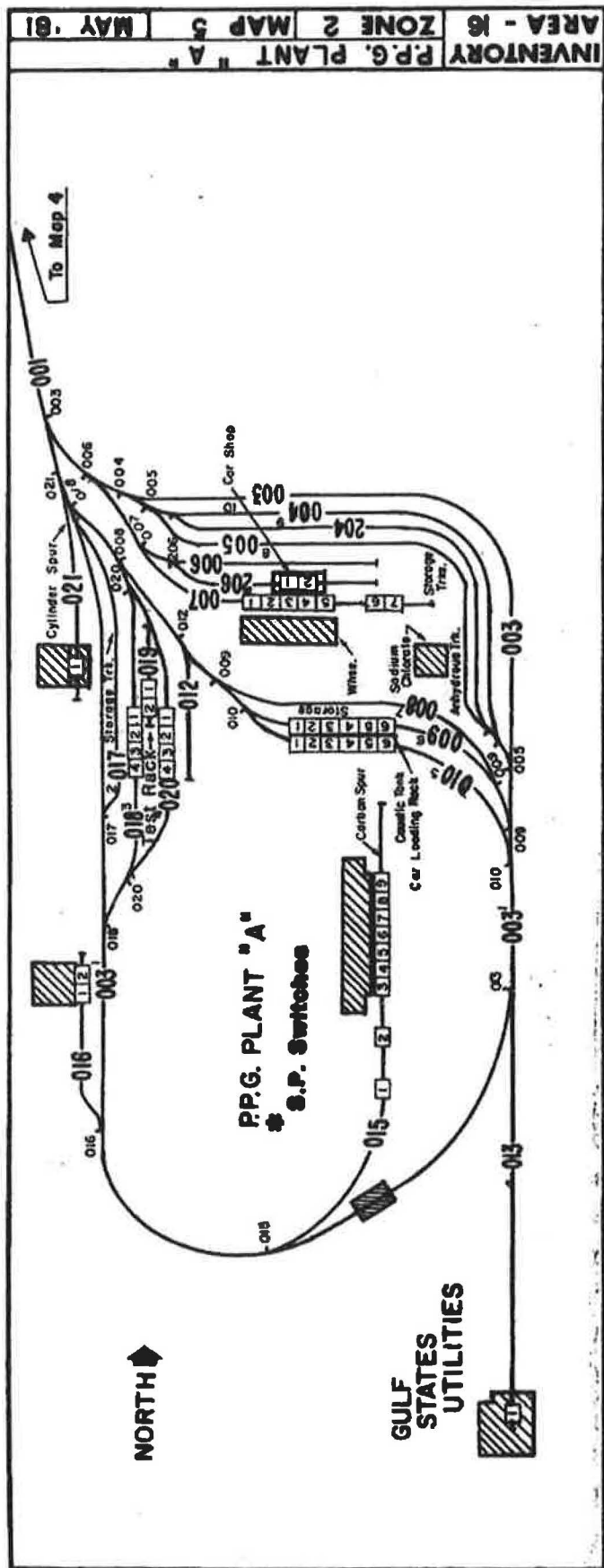


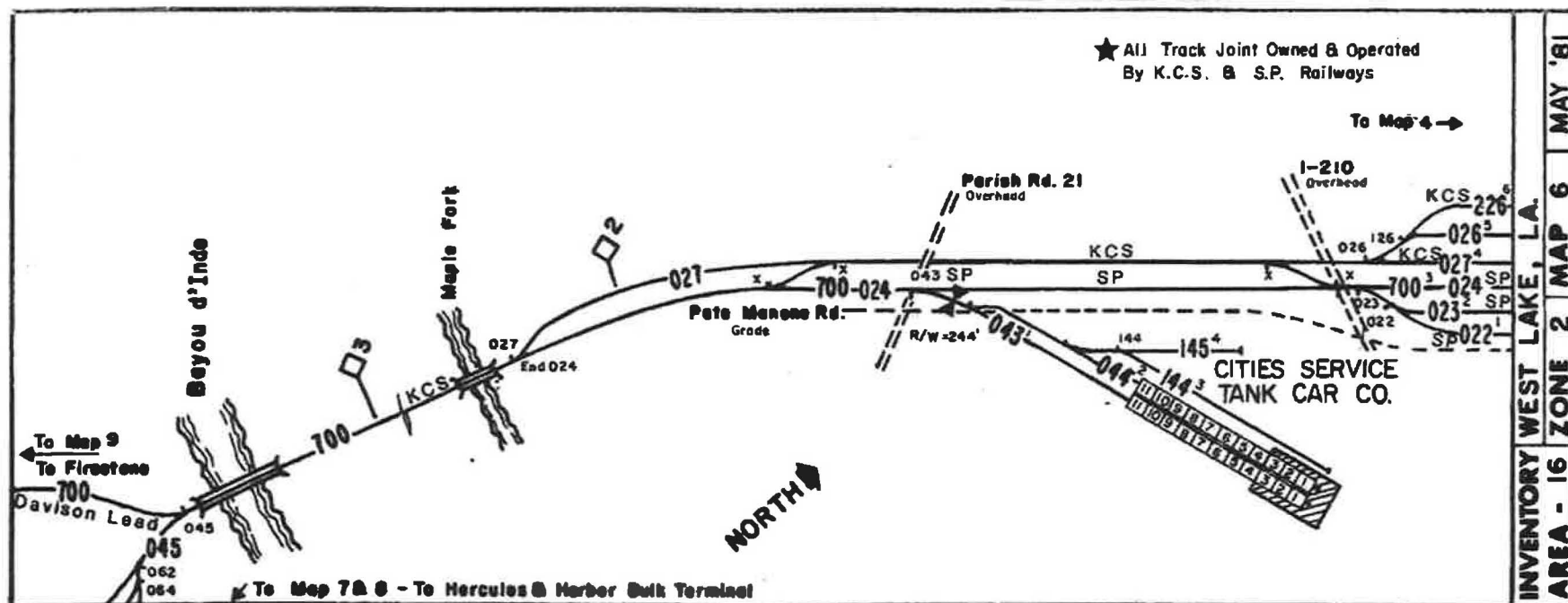


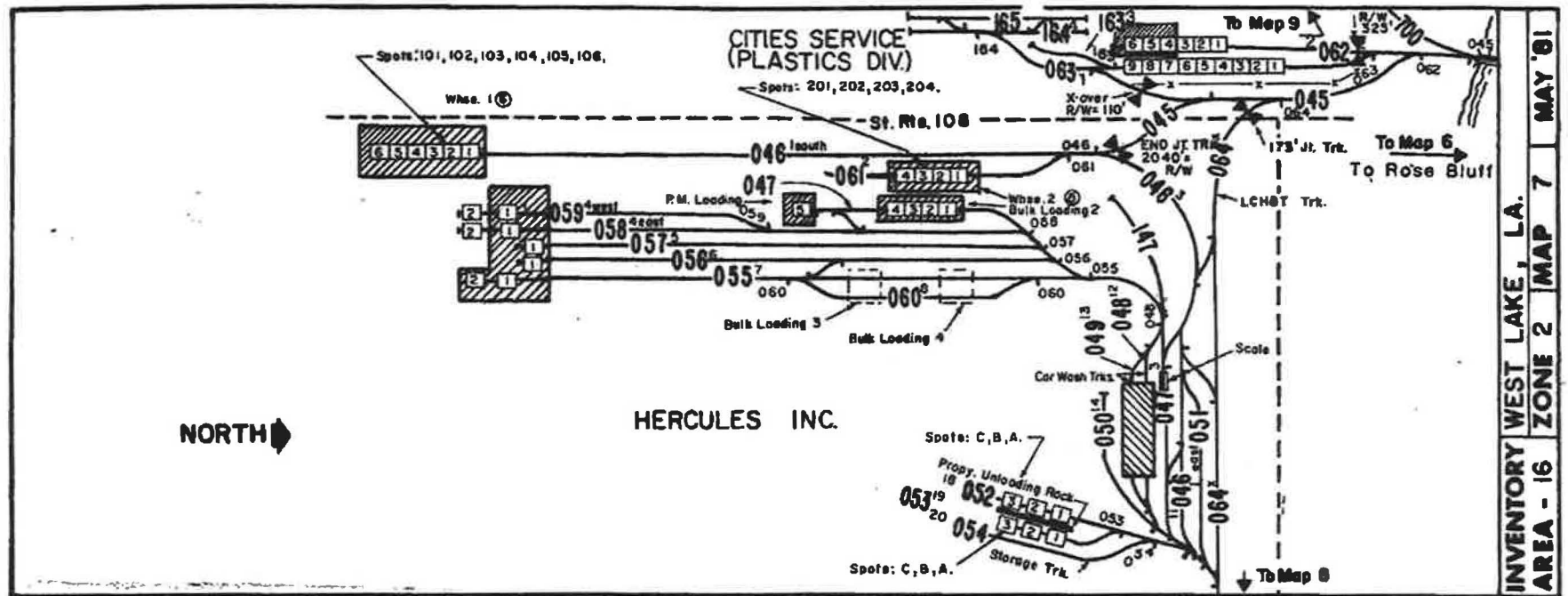


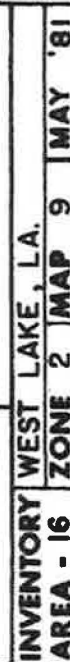
INVENTORY LOCKMOOR, LOUISIANA
 AREA - 16 ZONE 1 MAP 3 MAY '61











**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

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

REPLY TO BNSF'S AMENDED PETITION

EXHIBIT 2

Calcasieu Parish Recording Page

H. Lynn Jones II
Clerk of Court
P.O. Box 1030
Lake Charles, LA 70602
(337) 437-3550

Received From :
PHELPS DUNBAR
365 CANAL ST, STE 2000
NEW ORLEANS, LA 70130

First MORTGAGOR
HIMONT U.S.A., INC.

First MORTGAGEE
-RE: AMENDED ARTICLES OF INCORPORATION

Index Type : Mortgages

File Number : 2707059

Type of Document : Amended Articles

Book : 2967

Page : 158

Recording Pages : 7

Recorded Information

I hereby certify that the attached document was filed for registry and recorded in the Clerk of Court's office for Calcasieu Parish, Louisiana

On (Recorded Date) : 02/18/2005

At (Recorded Time) : 4:07:49:000 PM



Deputy Clerk



Doc ID - 011774170007

Additional Index Recordings			
Index Type	Book	Page	File Number
CON	3153	412	2707059

Return To :

Do not Detach this Recording Page from Original Document

Mtg & copy (6) 80
10
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "HIMONT U.S.A., INC.", CHANGING ITS NAME FROM "HIMONT U.S.A., INC." TO "MONTELL USA INC.", FILED IN THIS OFFICE ON THE THIRD DAY OF APRIL, A.D. 1995, AT 8:30 O'CLOCK A.M.

2015015 8100
050109713



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State
AUTHENTICATION: 3676352

DATE: 02-10-05

**RESTATED CERTIFICATE OF INCORPORATION
OF
HIMONT U.S.A., INC.**

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

HIMONT U.S.A., Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify:

1. That the name of the Corporation is HIMONT U.S.A., Inc., and that the date of filing of the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was August 15, 1983. The original Certificate of Incorporation was filed under the name HIMONT U.S.A., Inc.
2. That, pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, the board of directors of the Corporation duly adopted a resolution which declared it advisable that the Corporation amend and restate the Certificate of Incorporation by deleting the provisions thereof in their entirety and substituting in lieu thereof new provisions so that, as amended and restated, the provisions of the Certificate of Incorporation shall read in their entirety as hereinafter set forth.
3. That, pursuant to Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, the sole stockholder of the Corporation duly voted in favor of the foregoing amendment and restatement by giving its written consent thereto.
4. That the aforesaid amendment and restatement has been duly adopted in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.
5. That this Restated Certificate of Incorporation restates and amends the provisions of the Corporation's Certificate of Incorporation.
6. That the text of the Certificate of Incorporation is hereby restated and amended to read in its entirety as follows:

FIRST. The name of this Corporation is Montell USA Inc.

SECOND. The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

-2-

FOURTH. Section 1. The aggregate number of shares of stock which the Corporation shall have the authority to issue shall be Ten (10) shares of common stock without par value.

Section 2. Authority hereby is expressly granted to the board of directors from time to time to issue any authorized but unissued shares of common stock for such consideration and on such terms as it may determine.

Section 3. There shall be a two thirds (2/3) vote of the common stock issued and outstanding in order to approve any of the following:

- (a) an amendment of the Certificate of Incorporation of the Corporation;
- (b) the dissolution of the Corporation;
- (c) the sale, transfer or lease of all or substantially all of the assets of the Corporation;
- (d) the merger or consolidation of the Corporation with or into any other corporation.

FIFTH. The board of directors of the Corporation is expressly authorized to adopt, amend or repeal bylaws of the Corporation by a vote of a majority of the authorized number of directors.

SIXTH. To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had

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no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceedings, had reasonable cause to believe that his conduct was unlawful.

The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery, or the court in which such action or suit was brought, shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

To the extent that such director, officer, employee or agent has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in the preceding two paragraphs, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under this Article SIXTH (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth therein. Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if

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obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

The Corporation may, if it is deemed advisable by the board of directors, indemnify any person who was a director, officer, employee or agent of any corporation which has been consolidated with or merged with the Corporation or who was serving at the request of such a corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise and give such person the same rights under the provisions of this Article SIXTH with respect to the Corporation as he would have if he had served the Corporation in the same capacity.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized by this Article SIXTH.

The indemnification and advancement of expenses provided in or granted pursuant to this Article SIXTH shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

The Corporation, when and to the extent authorized by the board of directors, shall purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article SIXTH.

The indemnification and advancement of expenses provided in or granted pursuant to this Article SIXTH shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

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SEVENTH. Whenever a compromise or arrangement is proposed between the Corporation and its creditors, or any class of them, and/or between this Corporation and its stockholders, or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code, or on the application of trustees in dissolution, or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths (3/4) in value of the creditors or class of creditors and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agrees to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall be, if sanctioned by the court to which the said application has been made, binding upon all the creditors or class of creditors and/or upon all the stockholders or class of stockholders of the Corporation, as the case may be, and also on the Corporation.

IN WITNESS WHEREOF, HIMONT U.S.A., Inc., has caused this Restated Certificate of Incorporation to be executed by its President and attested by its Secretary this 31st day of March, 1993.

HIMONT U.S.A., INC.

By Paul Leone
President Kew

Attest:

By Kevin E. Olshak
Secretary

Calcasieu Parish Recording Page

H. Lynn Jones II
Clerk of Court
P.O. Box 1030
Lake Charles, LA 70602
(337) 437-3550

Received From :
PHELPS DUNBAR
365 CANAL ST, STE 2000
NEW ORLEANS, LA 70130

First MORTGAGOR
MONTELL USA INC.

First MORTGAGEE
-RE: AMENDED ARTICLES OF INCORPORATION

Index Type : Mortgages
Type of Document : Amended Articles

File Number : 2707060
Book : 2967 **Page :** 165

Recording Pages : 3

Recorded Information

I hereby certify that the attached document was filed for registry and recorded in the Clerk of Court's office for Calcasieu Parish, Louisiana

On (Recorded Date) : 02/18/2005

At (Recorded Time) : 4:11:16:000 PM



Deputy Clerk



Doc ID - 011774190003

Additional Index Recordings			
Index Type	Book	Page	File Number
CON	3153	419	2707060

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(2) 40
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PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "MONTELL USA INC.", CHANGING ITS NAME FROM "MONTELL USA INC." TO "BASELL USA INC.", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF SEPTEMBER, A.D. 2000, AT 9 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE SECOND DAY OF OCTOBER, A.D. 2000.

2015015 8100

050109713



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State
AUTHENTICATION: 3676353

DATE: 02-10-05

CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION
OF
MONTELL USA INC.

It is hereby certified that:

1. The name of the corporation (hereinafter called the "Corporation") is

Montell USA Inc.

2. The Restated Certificate of Incorporation of the Corporation is hereby amended by striking out Article FIRST thereof and substituting in lieu of said Article the following new Article:

"FIRST. The name of this Corporation is Basell USA Inc."

3. The amendment of the Restated Certificate of Incorporation herein certified has been duly adopted and written consent has been given in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

4. The effective date of the amendment herein certified shall be October 2, 2000.

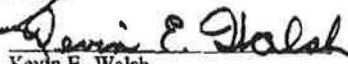
IN WITNESS WHEREOF, Montell USA Inc. has caused this Certificate of Amendment of Restated Certificate of Incorporation to be executed by its President and attested by its Secretary this 27th day of September, 2000.

MONTELL USA INC.

By:


C. E. Platz
President

Attest:


Kevin E. Walsh
Secretary

Calcasieu Parish Assessor 2018 Assessment Listing

Parcel#

01096028

Primary Owner

BASELL USA INC

Mailing Address

C/O CUMMINGS WESTLAKE LLC
12837 LOUETTA RD STE 201
CYPRESS TX 77429-0000

Ward

4

Type

REAL ESTATE

Legal

@181009-0000-1100001 0000

@181009-0000-1200003 0000

@181009-0000-1300002 0000

@181009-0000-1400001 0000

THE N 1942.7 FT OF NE SEC 18.10.9 DESC AS: BEG NE COR SEC 18 TH S 89 DEGS W 2664.7
FT S 0 DEGS E WITH

NORTH-SOUTH CENTERLINE SAID SECTION 1942.7 FT N 89 DEGS E 161.60 FT TO THE E R/W
LINE HWY NO. 108 TH

CONTINUING N 89 DEGS E FOR A TOTAL OF 2671.90 FT TH N 0 DEGS W WITH E SECTION
LINE 1942.7 FT M/L TO COM

(CONTAINS 119 ACS) LESS 8.01 ACRES WITHIN R/W HWY NO. 108, AND 2.58 ACRES WITHIN
R/W HWY NO. 1134

REF1- MRS ELAINE PUJO REILY ET AL B 1847 P 147-85

REF2-HIMONT U S A INC B 3153 P 412-04

Physical Address

CITIES SERVICE HWY

Parcel Items

Property Class	Assessed Value	Units	Homestead
008 INDUST LAND	143,110	108.41	0
TOTAL	143,110	108.41	0

Ownership History

Homestead?	Name	Primary?	% Ownership	% Tax	From	To Address
NO	BASELL USA INC	YES	100.0000	100.0000	1/1/1980	

Locations

Subdivision	Block	Lot	Section	Township	Range	Tract
NO SUB	110	0001	18	10	09	110-0001
NO SUB	120	0003	18	10	09	120-0003
NO SUB	130	0002	18	10	09	130-0002
NO SUB	140	0001	18	10	09	140-0001

PARISH

Millage	Mills	Taxpayer Tax	Homestead Tax
001 PAR TX MT(12345678,8I)	4.1800	598.20	0.00
004 CONSTSCHOOL MT(ALL)	5.1300	734.15	0.00
005 SPECIAL SCHOOL (ALL)	12.1000	1,731.63	0.00
008 ROAD MAINT MT (ALL)	3.8800	555.27	0.00
009 CAL-LC HEALTH MT(ALL)	2.3700	339.17	0.00
010 JUV DET HOME MT (ALL)	3.3300	476.56	0.00
012 MOSQ CONT MT(ALL)	2.3000	329.15	0.00
013 ASSESSOR MT (ALL)	1.2700	181.75	0.00
017 CRIMINAL JUST MT(ALL)	3.0200	432.19	0.00
023 SCHOOL #23 (*4,*4S,4W)	8.5500	1,223.59	0.00
034 WCCH (4,4S,4W,7,7V)	9.5300	1,363.84	0.00
037 GRAV 5 MT (4,4S,4W)	4.5500	651.15	0.00
042 LIBRARY MT (ALL)	5.5100	788.54	0.00
045 AIRPORT MT (3,3L,*4)	0.6000	85.87	0.00
047 LCH&T(*13,3L*4*4S4W*6)	2.5300	362.07	0.00
062 LAW ENF #1 MT(ALL)	5.2300	748.47	0.00
067 COLISEUM MT (ALL)	1.4300	204.65	0.00
086 CHENLT AUTH MT(ALL)	5.4500	779.95	0.00
087 CRTHSE JAIL MT(ALL)	3.1200	446.50	0.00
090 LAW ENF #2 MT(ALL)	4.6200	661.17	0.00
093 COMM CTR #2 (*4,4S)	10.2500	1,466.88	0.00
TOTALS	98.9500	14,160.75	0.00