

UP/SP-425

BEFORE THE
SURFACE TRANSPORTATION BOARD

245289

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

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

ENTERED
Office of Proceedings
March 9, 2018
Part of
Public Record

**UNION PACIFIC RAILROAD COMPANY'S COMMENTS
REGARDING KANSAS CITY RAILWAY COMPANY'S
"REPLY TO BNSF'S AMENDED PETITION"**

RHONDA S. FERGUSON
CRAIG V. RICHARDSON
ELISA B. DAVIES
JEREMY M. BERMAN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-7004

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

Attorneys for Union Pacific Railroad Company

March 9, 2018

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

**UNION PACIFIC RAILROAD COMPANY’S COMMENTS
REGARDING KANSAS CITY RAILWAY COMPANY’S
“REPLY TO BNSF’S AMENDED PETITION”**

To help ensure the record in this proceeding is accurate, Union Pacific is submitting these brief comments regarding KCS’s “Reply to BNSF’s Amended Petition.” The factual statements in numbered paragraphs 1 and 2 of this filing are verified by Chris Sanford, Union Pacific’s Manager, Interline Marketing.

1. Union Pacific agrees with KCS that, contrary to BNSF’s claim (BNSF-134, p. 7), the Montell Lead does not connect directly to the Rosebluff Lead. The track connecting the Montell Lead to the Rosebluff Lead is distinct from the Rosebluff Lead. As shown in the attached page from Union Pacific’s current Zone Track Spot (ZTS) book, the Rosebluff Lead is Track 105, the Montell Lead is Track 810, and the track connecting the Rosebluff Lead to the Montell Lead is Track 800. (See Attachment 1.)¹

2. Union Pacific agrees with KCS that, contrary to BNSF’s claim (BNSF-134, p. 7), the LYB facility at issue is not a successor-in-interest to the Occidental Chemical facility referenced in BNSF’s reply to KCS’s motion to dismiss. Union Pacific’s records show the facility

¹ Union Pacific’s ZTS book contains track diagrams that identify railroad and private tracks on which Union Pacific has rights to operate.

at issue was served under industry track agreements with Hercules Incorporated until 1985, Himont U.S.A., Inc., from 1985 to 1995, and Montell USA, Inc., from 1995 until 2017, when the Montell agreement was terminated and replaced by an agreement between Union Pacific and Equistar Chemicals, LP (a subsidiary of LYB). The Occidental Chemical facility BNSF's reply references appears to have been located across from LYB on the other side of Highway 108.

3. Union Pacific is concerned the Board might be misled by BNSF's claim that BNSF "will acquire rights to the Montell Lead from its owner, the Port of Lake Charles." (BNSF-134, p. 8.) Specifically, Union Pacific is concerned BNSF, and perhaps the Port, might be unaware of an important provision in the industry track agreement governing the Montell Lead. That provision appears to preclude a unilateral grant of operating rights by the Port, or even a joint grant of operating rights by the Port and Union Pacific. Union Pacific's discovery requests to BNSF seek to shed light on this issue.

Respectfully submitted,

RHONDA S. FERGUSON
CRAIG V. RICHARDSON
ELISA B. DAVIES
JEREMY M. BERMAN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-7004

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

Attorneys for Union Pacific Railroad Company

March 9, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2018, I caused a copy of the foregoing document to be served by email on counsel for BNSF, KCS, and CITGO.

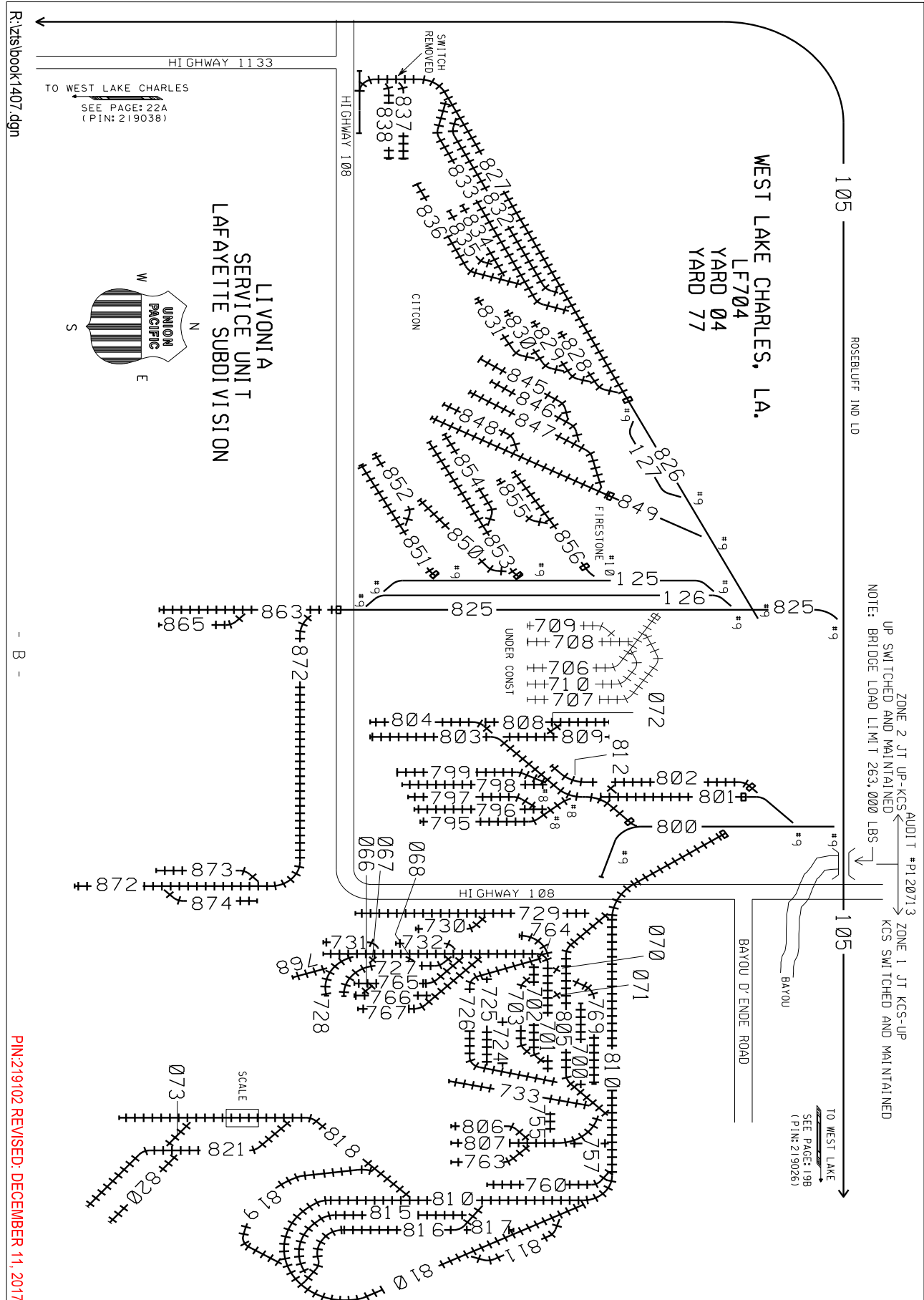
/s/ Michael L. Rosenthal

VERIFICATION

I, Chris Sanford, Manager of Interline Marketing for Union Pacific Railroad Company, declare under penalty of perjury that the factual statements numbered paragraphs 1 and 2 of the foregoing document are true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on March 9, 2018.

/s/ Chris Sanford



PIN:219102 REVISED: DECEMBER 11, 2017