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June 25, 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: FD 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 (“KCS”) hereby files, via e-filing, KCS’s Reply to BNSF Railway Company’s Opening Statement as Supplemented on May 11, 2018 (“KCS’s Reply”) in the above-captioned matter. KCS’s Reply is being filed in both a “Public Version” and a “Highly Confidential” version. 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

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 32760 (SUB-NO. 46)

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

KCS'S REPLY TO BNSF RAILWAY COMPANY'S OPENING STATEMENT AS
SUPPLEMENTED ON MAY 11, 2018

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June 25, 2018

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 32760 (SUB-NO. 46)

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

**KCS'S REPLY TO BNSF RAILWAY COMPANY'S OPENING STATEMENT AS
SUPPLEMENTED ON MAY 11, 2018**

PREAMBLE¹

Seventy-one years ago, KCS and a predecessor of UP purchased 4.788-miles of government surplus lead track and 1.6-miles of related yard and industry track left over from World War II. In the following seventy-one years, KCS and UP's predecessors maintained and grew that track to perhaps twice its original size, extending service now to well over a dozen major industrial facilities. BNSF contributed nothing to that development.

Twenty-two years ago, in a last-minute behind-the-scenes deal, UP (without consulting KCS) agreed to grant BNSF limited access to Lake Charles area shippers. The Board vastly expanded BNSF's access, believing that KCS's size was an insufficient competitive counterweight to the combined UP-SP. Due to KCS's objections, the Board ordered BNSF to file a terminal trackage rights if it wanted direct access. No such application was filed at the time. Instead, UP and BNSF agreed upon an arrangement where UP provided BNSF with access

¹ KCS refers the Board to the Background established in the Board's July 5, 2016 decision ("Decision No. 3") for an expanded procedural history of the proceeding. KCS also adopts the various short citations and abbreviations that it previously used throughout this proceeding.

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to the Lake Charles Area shippers via a reciprocal switch. The switch charge was not market based nor was it set in accordance with any Board recognized methodology. Rather, it was the rate negotiated as part of the global settlement between UP and BNSF and reflected the give and take of various rights and obligations.

Access by BNSF via reciprocal switching has resulted in BNSF gaining a significant market share. By KCS Marketing's estimate, BNSF already has about half of the linehaul business from the portion of the Rosebluff Lead switched by UP. The issue now is whether the Board will mandate that UP and KCS subsidize BNSF with preferential operating conditions and below cost access fees, undercutting the very competition that the Board of 1996 sought to create. The Board should not continue down this path, but if it does, the Board must establish operating conditions and access fees that do not continue BNSF's unfair advantage.

SUMMARY OF ARGUMENT

Some eighteen years after the UP/SP merger, BNSF, apparently unsatisfied with its access via reciprocal switch, filed a terminal trackage rights request. That Application was directed not at serving Lyondell but at CITGO. Based upon the public interest findings developed twenty years ago, but the operational conditions of today, the Board, in 2016, granted BNSF's Application, although leaving it to the parties to negotiate operating conditions and compensation.

The negotiations did not yield an agreement. As result, on January 12, 2018, BNSF filed its current petition.² This time, the petition was directed at serving Lyondell. BNSF did not file

² BNSF's Petition seeks terms and conditions far better than those applicable to KCS and UP service to Lyondell. In effect, BNSF seeks, with the Board's approval, to be the ultimate "free rider" – enjoy all of the benefits of prior investment by UP and KCS, with very little cost, and without regard to what its access does for future investment and capacity. If BNSF skims the cream using below cost access fees, there is little incentive for either UP or KCS to continue to

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another terminal trackage rights application establishing that the public interest now requires it to serve Lyondell – relying instead on the Board’s prior public interest findings with respect to CITGO,³ which in turn relied upon public interest findings from 1996, when Lyondell’s facility was operated by another company. BNSF’s Petition simply requested that the Board set the terms and conditions of BNSF’s proposed direct service to Lyondell⁴ and that its proposed operations were practicable and would not impair UP’s and KCS’s service.

On February 1, 2018, KCS filed a Motion to Dismiss BNSF’s Petition. The Board denied the motion in a decision served May 1, 2018 and corrected on May 4, 2018 (“Decision No. 4”). KCS believes that the Board erred in allowing BNSF to file a petition seeking access to Lyondell without requiring BNSF to prove that service to Lyondell is in the public interest based upon cotemporary findings, not findings from the CITGO proceeding or from twenty years ago, without first establishing that BNSF has the right to use the tracks of third parties in order to serve Lyondell, without requiring BNSF to present an operating plan that does not interfere with KCS’s use of Rosebluff Yard, and without compensating KCS for the use of KCS’s property.

The BNSF Petition is in effect a new free-standing application under Section 11102(a). BNSF should not be able to rely on public interest findings made with respect to CITGO, which

invest. These are the exact same concerns that BNSF itself expressed with respect to the Board’s Ex Parte No. 711 proceeding, but, here, BNSF wants the Board to ignore those concerns.

³ The previous findings themselves are no longer applicable. Certainly one can longer say that it is in the public interest to have BNSF direct service to CITGO when CITGO no longer needs and BNSF no longer seeks to provide such service.

⁴ BNSF’s Petition, while directed at Lyondell, also asks that whatever terms and conditions are established by the Board should also apply to any other shipper that BNSF elects to serve. The vast differences between BNSF’s abandoned CITGO operating plan and its proposed Lyondell operating plan make plain that one-size-fits-all operating terms would abdicate the Board’s responsibility under Section 11102(a) to find the proposed service practicable without substantially interfering with KCS and UP service. One-size-fits-all operating conditions would not be judicially sustainable.

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decision itself was in error as it relied upon public interest findings made under a different public interest standard than that applicable to Section 11102(a).

BNSF has also failed to present any evidence that it has rights to operate over third-party independently-owned tracks that connect Lyondell to the Rosebluff Lead. The Board cannot make any operational findings regarding the harm to UP's and KCS's operations without knowing the terms of access that these third parties may grant BNSF, or even if these third parties even have the right to grant such access to BNSF.

BNSF's Petition also fails to show that its proposed access to Lyondell will not substantially impair KCS's service. The Board's findings of operational feasibility of BNSF's proposed service to CITGO are irrelevant to this proceeding, where BNSF plans to use different tracks to serve a different shipper at a different location with different, non-unit trains volumes that require switching on the lead. As such, BNSF must abide by certain operating conditions (commitments) to ensure that its operations do not interfere with KCS operations.

BNSF also does not propose to pay KCS compensation that complies with the statutory requirement that payment be set in accordance with the "principle controlling compensation in condemnation proceedings." 49 U.S.C. § 11102(a). BNSF has completely failed to propose any acceptable method to provide compensation to KCS. Instead, BNSF proposes paying nothing to KCS, and only making payments to UP in accordance with their merger agreement from 1996. This does not comport with condemnation principles. BNSF should be required to pay KCS an access fee consistent with the principles of Efficient Component Pricing ("ECP"). Absent application of that methodology, BNSF should pay KCS a market based fee based upon other equivalent fees that carriers charge each other in allowing access to its tracks or its shippers, as specified in Section IV (E) below.

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When the evidence presented by KCS is considered, collectively, it is clear that BNSF's Petition to set terms and conditions should be denied. BNSF has not established that (1) Decision No. 3 could grant BNSF access to shippers other than CITGO; (2) service to Lyondell meets the public interest standard; (3) that BNSF presently has the legal or contractual right to use industry tracks to provide direct service to Lyondell; (4) that BNSF's proposed operation will not substantially interfere with KCS and UP service; and (5) that BNSF will pay KCS for the use of KCS's property in accordance with principles applicable in condemnation that are consistent with the Fifth Amendment.

ARGUMENT

I. BNSF SHOULD BE REQUIRED TO PROVE THAT SERVICE TO LYONDELL IS IN THE PUBLIC INTEREST; IT CANNOT RELY UPON PUBLIC INTEREST FINDINGS FROM THE UP/SP MERGER OR DECISION NO. 3

The Board should dismiss or deny BNSF's Petition because BNSF has failed to carry its burden of proof under 49 USC §11102(a) to show that it is in the public interest for BNSF to be granted directed access to Lyondell. Decision No. 4 addressed, in part, this assertion by stating that the "Board finds no merit in KCS's assertion that the Lyondell facility is not covered by the Lake Charles Merger Conditions imposed in UP/SP Decision No. 44 and reaffirmed in UP/SP Decision No. 63." The Board misses KCS's points.

KCS has made three closely related, but not identical points: First, the Board cannot just assume that simply because both facilities were intended to be covered by the Lake Charles Condition that the public interest findings applicable to CITGO apply to Lyondell. They are two different facilities with two different competitive and operational needs. Second, the Board cannot assume that what was applicable to Montell so as to justify its inclusion in the Lake Charles Condition is also applicable to Lyondell today. Finally, the Board cannot use Section

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11102 to impose terminal trackage rights for any Lake Charles Area shipper, whether CITGO, Lyondell, or any other shipper, based upon general public interest findings from twenty-two years ago and assuming those same conditions apply today to justify a public interest finding.

A. The Board's Public Interest Findings In Decision No. 3 Were Based Upon Evidence Directed at Service to CITGO - Not Lyondell

BNSF's Application did not seek access to Lyondell. The entire previous evidentiary record that led to Decision No. 3 was based upon evidence filed, presented, and defended, with respect to CITGO, not Lyondell. In the BNSF Petition, BNSF has not presented any evidence to establish that service to Lyondell is in the "public interest." BNSF simply skipped that step, and asked the Board to grant access without establishing the required public interest element set forth in 49 U.S.C. §11102(a).

To allow BNSF to skip the public interest test with respect to Lyondell places the cart before the horse. BNSF should not be allowed to use Decision No. 3's public interest findings with respect to CITGO, which public interest findings were themselves incorrectly based upon findings from twenty years ago, to mean that for all Lake Charles Area shippers going forward, BNSF can simply skip the public interest element. BNSF's request to serve Lyondell is in effect a new terminal trackage rights application seeking access to a shipper other than CITGO. As such, it should be required to establish that the Section 11102's public interest requirement is met with respect to Lyondell.

The 2013 Application and accompanying evidentiary record all focused on BNSF's efforts to get trackage rights to serve CITGO. There was nothing other than a passing mention of any other shipper.

The Board cannot apply the CITGO public interest evidentiary findings automatically to Lyondell. CITGO's and Lyondell's facilities, competitive positions, and operations are vastly

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different. BNSF asks the Board to assume that whatever public interest findings apply to CITGO apply to Lyondell. The Board cannot make this assumption. Indeed, the fact that market conditions with respect to CITGO's rail transportation needs have changed so dramatically within a three to four year period so that CITGO no longer even requires or needs BNSF service shows the inherent inconsistency and legal fallacy of using findings from CITGO to be applicable to Lyondell. There is simply no evidence in the record that BNSF service to Lyondell, as opposed to CITGO, meets either the Midtec standard⁵ or even the public interest standard articulated by the Board in Decision No. 3.

The Board can only make findings based on the evidentiary record presented to it.⁶ It cannot use evidence directed at CITGO to make public interest and practicability findings with respect to Lyondell when there was no evidence directed in the CITGO proceeding at service to Lyondell. For the Board to simply apply its CITGO-based findings to Lyondell when there was no evidence in the record directed at BNSF providing direct service to Lyondell would be reversible error.⁷ Having produced evidence focused on CITGO and the Board's findings being based upon that evidence, the Board cannot use those findings to show that the public interest

⁵ See Midtec Paper Corp. v. Chicago & North Western Transportation Co., 3 I.C.C.2d 171 (1986) (requiring a showing of anticompetitive conduct by the owning carrier) ("Midtec").

⁶ Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern & Santa Fe Railway Company, NOR 42057, slip op. at 5 (STB served Jan. 19, 2005), reconsideration denied Burlington Northern & Santa Fe Ry. v. STB, 453 F.3d 473, 2006 U.S. App. LEXIS 14749 (discussing the evidentiary standards developed by the Board to assist it in carrying out its statutory obligation and ensure that decisions are based on the evidentiary record). See also Duke Energy Corp. v. Norfolk S. Ry., NOR 42069, slip op. at 13-15 (STB served Nov. 6, 2003).

⁷ 5 U.S.C. § 706(e); see also, CSX Transp. v. Surface Transp. Bd., 96 F.3d 1528, 1996 U.S. App. LEXIS 26609 (D.C. Cir. 1996) (reversing a decision by the ICC/Board after finding that the record lacked substantial evidence to support the ICC/Board's findings); and Jost v. Surface Transp. Bd., 194 F.3d 79, 1999 U.S. App. LEXIS 26582 (D.C. Cir. 1999) (remanding case to the Board because the Court, based upon the underlying record, was unable to determine the basis for the Board's decision).

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supports BNSF direct service to Lyondell. Until there is a finding based on contemporary evidence that the public interest requires BNSF direct access to Lyondell, neither BNSF nor the Board can proceed to the next step – i.e., the substantial interference test. As such, BNSF's Petition should be denied.

B. The Board Cannot Assume That Lyondell and Montell's Competitive Positions Are The Same So As To Justify A Public Interest Finding In Favor Of Lyondell

There is no evidence in the record to show that Lyondell is in the same competitive posture and position as was the Montell facility so that the Lake Charles Condition should apply to Lyondell. BNSF has failed to give the Board the information necessary to evaluate this argument. Initially, BNSF contended that Lyondell's predecessor was Occidental Chemical. After KCS and UP challenged BNSF's contention, BNSF changed course in its March 22 filing and stated that the facility was previously owned by Montell.⁸ At the time of the UP/SP merger, based on the evidence presented, the Board thought certain rail shippers, including Montell, needed to be protected as part of the merger. The Board made specific findings based on the competitive situation of Montell and similarly situated shippers, i.e., these shippers would see a loss to competitive options. Those findings are inapplicable twenty-two years later to a different shipper with a completely different competitive situation and who already has access to BNSF via reciprocal switching and therefore is not losing any competitive option as a result of a Board approved transaction. Just because Lyondell is located at the same location as Montell does not mean that Lyondell should be treated as if it was in the same competitive posture as Montell was in 1996.

⁸ BNSF Reply 5-6, Mar. 22, 2018.

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At a minimum, the Board must make contemporary findings to show that Lyondell's needs and Montell's needs are similar enough that the public interest finding applicable to Montell remains applicable to Lyondell. Yet, BNSF's Petition is completely devoid of such evidence. At most, there is a letter from Lyondell that says it desires and needs BNSF service in order to improve its transit times. The Lyondell letter, which was not verified, does not qualify as evidence under the Board's regulations.⁹ Even if it does, the letter lacks specifics about why the existing access by UP, KCS, and BNSF places Lyondell in such a competitive disadvantage that Lyondell should be entitled to the same competitive condition that was granted to Montell. BNSF's and Lyondell's complaint of needing two extra days of transit time does not amount to the same showing of public interest that Montell made in the UP/SP proceeding. In that proceeding, Montell filed comments showing how an unconditioned merger would disadvantage their competitive situation. Here, Lyondell has no such competitive disadvantage. Lyondell already has access to BNSF via a UP reciprocal switch. The fact that Lyondell desires to improve its transit times by two days through direct BNSF service rather than through a reciprocal switch does not meet the public interest standard of Section 11102.¹⁰

⁹ 49 C.F.R § 1104.5 spells out requirements for verified statements.

¹⁰ This is particularly true given that Lyondell produces plastic pellets. Montell's testimony in the UP/SP proceeding said that Montell used railcars for storage before being ultimately delivered to the customer. Therefore, if Lyondell's needs parallel Montell's, as BNSF's Petition asks the Board to assume, Lyondell cars moved via a BNSF direct service will go directly to BNSF's Lacassine Yard for storage. Lyondell does not explain why there needs to be an improvement in transit time for cars destined to storage. Lyondell does not explain how having cars being delayed by two days in transit to storage places Lyondell at competitive disadvantage so that they need direct access to BNSF to remedy competitive effects from the UP/SP merger.

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C. The Board May Not Rely On Public Interest Findings From 1996 UP/SP Merger

BNSF's and the Board's response (in Decision Nos. 3 and 4) to all of KCS's public interest arguments in CITGO is simply to point to Decision No. 44 and Decision No. 63.

BNSF's argument is something like the following:

The Board found in the UP/SP merger that the Lake Charles Area shippers would be competitively disadvantaged by the merger. It imposed the Lake Charles Condition to remedy those competitive effects. Realizing that it could not impose direct trackage rights on KCS as a merger condition¹¹ and could only do so in the context of Section 11102, the Board told BNSF that if negotiations weren't successful, it should file a terminal trackage rights application. BNSF did not do so. Instead, BNSF obtained access via reciprocal switching. However, BNSF was entitled to change its mind, so when BNSF filed such a terminal trackage rights application in 2013 to serve CITGO, the Board granted access to CITGO. This was because CITGO was a Lake Charles Area shipper covered by the Lake Charles Condition and because the Board found twenty years earlier that it was in the public interest for BNSF to have direct access. Now, five years after the Application, BNSF asks for access to Lyondell. Lyondell is a Lake Charles Area shipper. The Board's CITGO decision was intended to cover all Lake Charles Area shippers so the 1996 public interest finding with respect to the UP/SP merger and as applied to CITGO should also apply to Lyondell. The Board should set operations and compensation terms to grant BNSF access to Lyondell.

There are several problems with BNSF's argument. As noted above, CITGO and Lyondell do not have the same competitive and operational issues, so findings based upon a record directed to CITGO do not apply to Lyondell. Similarly, Lyondell's competitive position is far different today than that of Montell at the time of the merger. Perhaps the largest fallacy is

¹¹ It is black letter law that the Board cannot compel non-applicant railroads, like KCS was in the UP/SP merger, to grant trackage rights to other carriers in connection with a proposed railroad consolidation transaction. See In Rio Grande Industries, et al.—Pur. & Track. — CMW Ry. Co., 5 I.C.C.2d 952, 1989 ICC LEXIS 284, *56 (1989) (the Interstate Commerce Commission explained that it could not use its “plenary” authority under former section 11341 (now section 11324) “to compel a [non-applicant] carrier to grant trackage rights over its line to another carrier.”). See also Rio Grande Industries, Inc., et al. — Purchase and Related Trackage Rights — Soo Line Railroad Company Line Between Kansas City, MO and Chicago, IL, Finance Docket No. 31505, 1989 ICC LEXIS 351, Decision No. 6, slip op. at 8 (ICC served Nov. 13, 1989) where the ICC re-stated its position that it could not use the pendency of a consolidation proceeding as an excuse for imposing trackage rights over the lines of a non-applicant.

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that such a rationale ignores that the Board's public interest standard for imposing a merger condition is far different than the public interest standard required by Section 11102. It also ignores the fact that the Board cannot rely upon a factual record more than twenty years old supporting a merger condition and then transplant those factual findings into a terminal trackage rights request filed in 2018. A public interest finding justifying access under Section 11102 must be based upon whether the facts, as they exist today, meet the public interest standard of Section 11102. The Board cannot substitute findings from the 1996 UP/SP merger that were not made under Section 11102 for a public interest finding twenty-two years later under Section 11102. Section 11102 has a different public interest standard than the one the Board reviews in determining whether a merger condition should be imposed.

Even if the Board believes that it is necessary to use Section 11102 to implement a merger condition, i.e., the Lake Charles Condition, the Board still cannot impose BNSF direct access. This is because in implementing and fashioning a merger remedy, the Board must impose the least intrusive remedy and must not put the proponent of the condition in a better position than before the merger. Decision No. 44, 1 S.T.B. 233, 1996 STB LEXIS 220, *419 (STB served Aug. 12, 1996). The Board fails that test if it grants BNSF direct rights to serve Lyondell.

Terminal trackage rights are to be the remedy of last resort.¹² If the Board is to use Section 11102 at all to implement the Lake Charles Condition and twenty-two years later, the

¹² See Shenango Inc., et. al. v. Pitts., Chartiers & Youghioghney Ry. Co., 5 I.C.C.2d 995, 1989 ICC LEXIS 281, *16 (ICC served Sept. 28, 1989) (as an ameliorative condition, "[t]rackage rights are a remedy of last resort for use when less intrusive remedies such as rate relief and reciprocal switching are insufficient"); Western Fuels Service Corporation v. The Burlington Northern and Santa Fe Railway Company, et al., NOR 41987, et al. (STB served Jul. 28, 1997), slip op. at 7 ("[a]s we have stated on several occasions, the prescription of terminal trackage rights is an extraordinary remedy, one to be afforded only when less intrusive remedies such as

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least intrusive remedy is to invoke Section 11102(c) and impose reciprocal switching. Granting terminal trackage rights would, contrary to precedent, actually put Lyondell (Montell) in a better competitive position than its facility had prior to the merger, with BNSF having unfettered, unlimited rights broader than the contractual rights UP or KCS ever had – or even KCS has now. Of course, Lyondell already has access to BNSF via reciprocal switching. That access, which is subsidized at non-remunerative rates, has allowed BNSF to gain the substantial majority of Lyondell's traffic. As such, BNSF's existing access through switching and haulage rights has allowed BNSF to more than fully replicate the competition that would have otherwise been lost when SP merged into UP. The "public interest" under Section 11102 does not support granting BNSF any more access than is necessary to remedy the harm from an unconditioned merger. That access is, at most, reciprocal switching access to BNSF – a remedy that Lyondell already has.

II. BNSF HAS NOT SHOWN THAT IT HAS THE RIGHT TO ACCESS THE 0.4 MILE CONNECTING TRACK OR THE INDEPENDENTLY-OWNED MONTELL LEAD

Lyondell is not on the Rosebluff Lead nor do its tracks connect directly to the Rosebluff Lead. Instead, to serve Lyondell, BNSF must traverse two separate tracks - the Montell Lead (owned by the Port of Lake Charles) and a 0.40-mile segment of track whose ownership is not identified by BNSF. The previous grant of rights to BNSF pursuant to its CITGO Application did not include access over these tracks, nor could it. The Board has no legal authority to impose terminal trackage rights over track not owned by a rail carrier.¹³

rate relief, alternative through routes, or reciprocal switching are insufficient") (citations omitted).

¹³ "The Board may require terminal facilities...*owned by a rail carrier*...to be used by another rail carrier..." 49 U.S.C. §11102(a) (emphasis added).

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There is no evidence in the record that BNSF presently has the right to access either the Montell Lead or the 0.40-mile track which is required to connect the Montell Lead to the Rosebluff Lead. BNSF has not established that it even has the contractual right to operate over these tracks.

Decision No. 3 did not grant BNSF access over “related tracks” so that BNSF could get on/off the Rosebluff Lead to serve other shippers.¹⁴ The BNSF Opening only asked the Board to “confirm the direct trackage rights granted to BNSF over the Rosebluff Lead.”¹⁵ Moreover, BNSF only presented legal argument that service to CITGO was necessary. Given that BNSF failed to introduce argument concerning its intent to utilize the Montell Lead, or any track other than the Rosebluff Lead, it would be impossible for Decision No. 3 to be interpreted as having granted BNSF permission to traverse industry track owned by third parties to serve shippers like Lyondell that are not located on and whose tracks are not adjacent to the Rosebluff Lead.

The scope of BNSF’s actual trackage rights is not a peripheral issue. The Board in Decision No. 44, the BNSF Settlement Agreement, and countless decisions since then have carefully crafted exactly what rights BNSF has, exactly what tracks BNSF can operate over, what tracks BNSF can get on and off of, and exactly what shipper facilities BNSF can serve.¹⁶

¹⁴ BNSF’s application only sought access to the Rosebluff Lead: “BNSF seeks terminal trackage rights over the Rosebluff Lead, a nine-mile track jointly owned by Kansas City Southern Railway Company (KCS) and UP. The Board will grant BNSF’s application.” Decision No. 3 at 1.

¹⁵ BNSF Opening at 1.

¹⁶ See UP/SP Oversight, FD 32760 (Sub-No. 21), Decision No. 19, slip op. at 9 (STB served Nov. 8, 2001) (rejecting BNSF’s efforts to remove the entry/exit and Texas/Louisiana restrictions as they apply to St. Louis Gateway); Decision No. 20, slip op. at 4 (STB served Dec. 20, 2001) (explaining that BNSF’s right to serve 2-to-1 shipper facilities based on the BNSF Agreement provides BNSF only “overhead” trackage rights and does not allow BNSF access to intermediate points on the trackage rights lines, except for access to points expressly provided for in Exhibit A to the BNSF Agreement.); Decision No. 106, slip op. at 7-9 (STB served Dec. 20, 2013) (declining a shipper’s request to be treated as a 2-to-1 shipper); and Decision No. 109

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Likewise, in a terminal trackage rights application, a railroad must be specific as to what tracks it seeks terminal trackage rights over. See UP/SP, Decision No. 44, at *34-35 (identifying precise mileposts and tracks for which BNSF sought overhead terminal trackage rights over short segments of KCS track).¹⁷ BNSF's Application did not include access over the 0.40-mile track or the Montell Lead or the contracts governing access over these tracks. Without such information, the Board cannot make the required findings under Section 11102.

The Board did address this issue in Decision No. 4 when it stated:

The fact that BNSF is still in the process of acquiring the rights to traverse the tracks connecting the Lyondell facility to the Rosebluff Lead does not prevent the Board from establishing conditions and compensation for Docket No. FD 32760 (Sub-No. 46) use of the Rosebluff Lead in this proceeding. There is no language in Decision No. 3 indicating any prerequisite to the Board's establishment of conditions and compensation for the Rosebluff Lead (aside from an inability of the parties to collectively reach agreement on their own).

Decision No. 4, slip op. at 7-8.

Technically, the Board is right, but only with respect to CITGO. The Board can establish the terms and conditions for the use of the Rosebluff Lead to serve CITGO. There the record did include detailed operating information so that the Board could determine whether BNSF's proposed service to CITGO would impair UP's and KCS's operations in the Rosebluff Yard and on the Rosebluff Lead. There, BNSF's plans as to how and when it would use the Rosebluff Yard and the Rosebluff Lead to serve CITGO were specific to serving CITGO. Likewise, CITGO and BNSF had an agreement as to how and when BNSF would use CITGO's own tracks.

(STB served Jan. 31, 2018) (finding that BNSF does have access to Mission Rail Industrial Park, LLC).

¹⁷ Given that terminal trackage rights are granted to specific tracks, at best, BNSF was granted trackage rights over the Rosebluff Lead and was not granted access over other "related tracks" regardless of ownership of those tracks.

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Combining the proposed planned use of CITGO's tracks with the proposed use of the Rosebluff Lead and Yard could allow a determination as to how that would impact KCS and UP.

Here, however, the Board cannot make a similar determination with respect to Lyondell. BNSF has not shown how and when it plans to use the Montell Lead or the connecting track, both of which are necessary to provide direct service to Lyondell. Because BNSF does not yet have contracts governing those tracks. Such contracts would specify how and when BNSF could use the tracks. The Board's findings of operational feasibility of BNSF's proposed service to CITGO are irrelevant to whether BNSF's proposal to use different tracks to serve a different shipper at a different location with different, non-unit trains volumes that require switching on the lead would impair UP's and KCS's operations. In order for the Board to establish conditions of use, BNSF must present actual operating plans based upon actual conditions, for all segments that its trains will transverse in connection with its moves over the Rosebluff Lead. Otherwise, there is no way of confirming that whatever access BNSF obtains (particularly if limited in time and capacity) over the connecting track and the Montell Lead can be aligned with the access BNSF would have over the Rosebluff Lead and in the Rosebluff Yard. The Board needs both pieces of information to make the required Section 11102 finding.

BNSF's access on those independently-owned tracks may completely alter the operating plan and proposal that BNSF wants the Board to find practicable and not interfering with KCS and UP. Unless and until BNSF obtains the legal or contractual right to operate over these third-party tracks, BNSF's Petition must be denied. The Board cannot find that BNSF's service to Lyondell would not substantially interfere with KCS's or UP's service when BNSF has not even established how or when it has a right to operate over industry tracks necessary to serve Lyondell, or even if it will obtain the right to operate on such tracks. Unlike with respect to

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CITGO, the Board cannot find that BNSF's operations over such tracks would be consistent with the assumptions underlying BNSF's proposed operating plan.

III. TO AVOID SUBSTANTIAL IMPAIRMENT OF KCS'S OPERATIONS ON THE ROSEBLUFF LEAD, BNSF MUST BE HELD TO ITS SWORN TESTIMONY

If BNSF is granted terminal trackage rights to Lyondell, BNSF must be held to its sworn testimony in order to prevent substantial impairment of KCS's operations. Specifically,

- BNSF must operate through Rosebluff Yard only during UP's 'window,' and must be penalized if it fails to do so;
- BNSF must not stop, pick up or set out cars in Rosebluff Yard; and
- BNSF must not substantially impair UP's operations on the Rosebluff Lead.

An order that relieves BNSF of the representations on which its operating plan is based, such as 'the parties must just work out operational issues,' would be an abdication of the Board's responsibility and a confession that BNSF has not presented an operating plan on which the Board can order terminal trackage rights.

A. The Board Cannot Rely On Operational Findings Related To CITGO To Mean That Service To Lyondell And Other Rosebluff Lead Shippers Is Practicable And Will Not Substantially Interfere With KCS And UP Service

BNSF's Petition disproves the Board's earlier finding that if accessing one Rosebluff Lead shipper is practicable, the same finding applies equally to all shippers on the Lead. The Board should reverse that finding.

BNSF's proposed service to Lyondell is substantially different than BNSF's quickly-abandoned proposal to serve CITGO. Among other differences –

	BNSF's CITGO proposal	BNSF's Lyondell proposal
Transiting the lead	"I expect that this move [from entering the Rosebluff Lead to the CITGO facility] would take 25 minutes if BNSF has a clear route. Upon arrival at the CITGO facility, the	"BNSF expects the movement described in the preceding sentence [from Rosebluff Yard to the Montell Lead] to take approximately thirty

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	CITGO Direct Train will pull inside the facility and completely clear the Rosebluff Industrial Lead, thereby avoiding creating interference for other service on the lead.” Bredenberg VS at 7-8.	minutes to ninety minutes , depending on traffic.” Reilly VS at 7.
Occupying the lead	“move directly into and out of the CITGO facility as a unit without requiring any use of the Rosebluff Lead for staging or similar operations ” – Decision No. 3 at 14.	“• By approximately 0930, BNSF Job arrives at the LyondellBasell facility on the Montell Lead... “• BNSF Job performs air test on the train on the Montell Lead and prepares to depart by approximately 1300,” Reilly VS at 7-8, plus 30-90 minutes transit time each direction.
Switching on the lead	“The drop off, staging, unloading, storage and pick up of railcars for a BNSF 60-car unit train service would all occur on CITGO property and would not require the use of tracks outside the CITGO facility except for ingress and egress.” CITGO reply to BNSF terminal trackage rights application, Aug. 24, 2015, at 5.	“○ [around 0930] BNSF engine cuts away from inbound empty cars, leaving them on the Montell Lead “○ BNSF engine exits the LyondellBasell facility from the east switch, pulling the loaded outbound cars, and doubling the loaded outbound cars over to the inbound empty cars on the Montell Lead. “○ BNSF engine spots the outbound loaded cars onto the Montell Lead and cuts away the engine. BNSF engine runs around the outbound loaded cars by entering the LyondellBasell facility at the east switch, running through the facility, and exiting back out onto the Montell Lead using the west switch.” Reilly VS at 8.
Expanded capacity	“ CITGO commenced a three-year project in 2011 to establish and upgrade a crude	“I do not believe that additional capital improvements are required

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	oil unloading facility at the Lake Charles Refinery in order to increase its capacity to receive and unload crude oil from railcars. ” Barrett VS, ¶6, CITGO reply to BNSF terminal trackage rights application, Aug. 24, 2015.	to the Rosebluff Lead, the Rosebluff Yard, or the Montell Lead, in order to implement direct BNSF service to LyondellBasell.” Reilly VS at 10.
Interference with existing operations	“BNSF’s proposed operation on the Rosebluff Industrial Lead will not impede the ability of KCS or UP to handle their own business.... [T]he only change to KCS’s operations will be a reduction in congestion in Rosebluff Yard...” Bredenberg VS at 8.	“a certain level of interference and delay is common and expected in the railroad industry,” BNSF Petition at 6, citing the Board.
Service Frequency	Less than daily - BNSF proposed delivering 60-car blocks, while CITGO claimed capacity to unload about 40 cars per day	BNSF train would handle 15-20 cars per day – Reilly VS at 6.

Even if BNSF’s operating plan for CITGO were practicable, that finding does not apply to BNSF’s proposed access to Lyondell.

Each shipper’s needs and facilities are different. BNSF’s submission of a different operating plan for Lyondell verifies the point KCS made throughout the earlier phase of this proceeding – an operating plan for one shipper is not a practicable operating plan for another shipper. The Board should reverse its grant to terminal trackage rights to all shippers on the Rosebluff Lead because a service plan for CITGO does not show a practicable service plan for other Rosebluff Lead customers.

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B. BNSF Must Show That Its Proposed Operation Will Not Substantially Impair Either KCS's Or UP's Ability To Operate And Serve Their Customers

Section 11102(a) states that the Board may only grant terminal trackage rights if the applicant shows that its proposed use of other carriers' property is "practicable ... without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business." Particularly on the congested, tightly-constrained Rosebluff Lead, BNSF must show that it will not substantially impair the operations of *either* KCS or UP, as impacts on one owner's operation will invariably affect the other's.

KCS and UP operations in the Rosebluff Lead are heavily interdependent, and delays to one become delays to both. As co-owners of the Rosebluff Lead since 1947, UP and KCS share the use of Rosebluff Yard relatively equally, dividing switching into zones and basically taking equal turns in the yard each day.¹⁸ Rosebluff Yard is the interchange point for traffic reciprocally switched between KCS and UP.

Attached as Exhibit A, O'Neal VS, Division Superintendent, Operations in the South Division of KCS, reiterates what previous KCS operating witnesses have said – delays to KCS or to UP inevitably delay the other as well. O'Neal VS at 2-3, Exhibit B [Bartoskewitz VS] at 7, and Exhibit C [Scott VS] at 7-10. Often these delays cascade and take several days to remedy. O'Neal VS at 3. These delays still occur, forcing wasted expense on the carriers and impairing service to customers. Id.

Recently, KCS and UP have worked hard to reduce delays that impair each other's operations to better meet their customers' needs. When KCS can remain on schedule with the

¹⁸ KCS operates only one job, rather than the normal two, in Rosebluff Yard on Saturday and Sunday. Verified Statement of David O'Neal ("O'Neal VS") at 3. This reduced use of the yard by KCS on weekends allows UP additional flexibility to catch up from the week's business and aids in keeping the window schedule in the yard on time.

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windows planned for Rosebluff Yard, the customers that KCS serves adjoining the yard can more reliably plan their staffing and operations. Id.

Staying on schedule also allows KCS to avoid wasted expense. KCS's first job working Rosebluff Yard, RLC210, is scheduled to come on duty in time to move its train to Rosebluff Yard at 1800, when KCS's 'window' is scheduled to start. If KCS is held out of Rosebluff Yard due to delayed UP departure, the time of the RLC210 crew, as well as locomotive time and fuel, is wasted. Similarly, KCS's second job – RLC304 - which comes on duty at 2359, may have to wait for RLC210 to finish, wasting the RLC304 crew's time as well. These delays are wasteful and costly to KCS. Id. at 4.

Because KCS and UP operations on the Rosebluff Lead are so intertwined, to avoid substantially impairing KCS, BNSF must also avoid substantially impairing UP. BNSF's operating proposal apparently would monopolize the Montell Lead for at least 3 to 4 hours per day. Reilly VS at 7-8. Additionally, BNSF expects its transit to and from the Montell Lead to occupy track space between one and three hours per day. Reilly VS at 7. Most of this track occupancy would be in Zone 2, which is operated exclusively by UP. O'Neal VS at 2. All of this operation is designed to occur in UP's window. Reilly VS at 10 and Exhibit A at 6 ("[T]he preceding slide shows operational flexibility ... that exists for BNSF trains to operate during UP's operating window of 0600 to 1800").

UP is best able to explain the impact to UP of BNSF's proposed operation to Lyondell, including the effect having BNSF take only part of Lyondell's traffic and leave other traffic for UP to switch. But to whatever extent UP's operations are adversely affected, interrupted, delayed or prevented, those impacts affect KCS operations and service to KCS customers as well.

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C. If BNSF Is Granted Access To Lyondell, BNSF Must Be Held To The Representations Of Its Operating Plan To Stay In UP's Window – 'Just Work It Out' Is Not A Plan And Is Not A Finding

Repeatedly, BNSF has submitted sworn testimony that its operations through Rosebluff Yard will occur during UP's 'window' there. Yet, when KCS points out these commitments, BNSF equivocates and tries to wriggle out of them, saying that 'the parties just have to work it out, like everywhere else.'

'Just work it out' is not a plan and does not prove that BNSF's proposed operation is practicable. A decision stating that the parties will 'just have to work it out' would be an abdication of the Board's responsibility and a recipe for dispute and disruption on the Rosebluff Lead. BNSF must be held to its commitments to operate through Rosebluff Yard during UP's window.

BNSF has repeatedly represented to the Board that its operations will not impact KCS because BNSF will operate through Rosebluff Yard in UP's window. *E.g.*, "[T]he only change to KCS's operations will be a reduction in congestion in Rosebluff Yard..." Bredenberg VS at 8. "BNSF direct service could not affect KCS operations, because the BNSF trains would operate solely during UP's operating window." BNSF Final Brief at 14. Also, Reilly VS at 10 and Exhibit A at 6 ("operational flexibility ... exists for BNSF trains to operate during UP's operating window of 0600 to 1800".) The Board acknowledged these representations as a basis for its decision. "BNSF has proposed to operate all of its direct trains during UP's daily 12-hour window of operations at the Rosebluff Yard. (See BNSF Final Brief 14; Bredenberg Rebuttal V.S. 6, 8.)" Decision No. 3 at 14.

BNSF must be held to its representations that it will operate in UP's window; 'just work it out' is not an operating plan, and does not meet BNSF's burden of proof. Despite its multiple

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representations that it will operate during UP's Rosebluff Yard window, BNSF always equivocates when pushed to commit. Page 7 of Exhibit A to Reilly's VS shows BNSF planning to move through Rosebluff Yard on October 3, 2017, while KCS was still operating there. When KCS brought this to BNSF's attention in moving to dismiss BNSF's Petition, BNSF responded –

On that day, KCS apparently overstayed its scheduled 6 p.m. to 6 a.m. operating window in the Rosebluff Yard. The BNSF operating plan shows how a clear track through the Rosebluff Yard still existed on that day to accommodate the BNSF movement, despite any otherwise unexpected KCS activity in the Yard. BNSF is clear throughout its Petition and the Reilly V.S. that “BNSF will coordinate directly with KCS for BNSF's operation through the Rosebluff Yard” if a BNSF train and a KCS train are unexpectedly operating in the Rosebluff Yard at the same time.^{19,20}

Given the potential for injury, property damage and chemical spills if “a BNSF train and a KCS train are *unexpectedly* operating in the Rosebluff Yard at the same time,” requiring BNSF to operate only in UP's window will foster safety by preventing ‘unexpected’ occurrences.

Two points should be made about BNSF's attempted excuse for scheduling its October 3, 2017 operation during KCS's window in Rosebluff Yard –

- BNSF says its October 3 operating plan was based on a BNSF “observation study.”²¹ If BNSF was actually *observing* the operations in Rosebluff Yard, why didn't BNSF *observe* that it was KCS that was operating in the yard, not UP?
- Second, KCS has said almost innumerable times in this proceeding that the beginning and end of the UP and KCS operating windows in Rosebluff Yard are not fixed. Yet, BNSF says, “KCS *apparently overstayed its scheduled 6 p.m. to 6 a.m. operating window* in the Rosebluff Yard ... despite any otherwise unexpected KCS activity in the Yard.” The

¹⁹ BNSF's Reply to KCS's Motion to Dismiss BNSF's Petition, Feb. 21, 2018, at 4, n. 4.

²⁰ BNSF's quote in its footnote excuse omits the opening phrase from its exhibit, “*If BNSF is unexpectedly delayed, BNSF will coordinate...*” Unexpected delay to BNSF is only likely to push BNSF into KCS's window if BNSF is delayed several hours in departing Lyondell. If BNSF were delayed departing Lacassine Yard in the morning to being a movement to Lyondell that would make it *less likely* that BNSF would approach the Rosebluff Yard during KCS's window.

²¹ “BNSF confirmed the conclusion that BNSF direct service trains would not materially interfere with UP or KCS operations by conducting an observation study of the two carriers' operations at the Rosebluff Yard and on the Rosebluff and Montell Leads from October 1 to October 7, 2017. *See* Exhibit A at 4-6.” Reilly VS at 10-11.

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evidence in this proceeding makes abundantly clear that operations *often* do not conform to scheduled operating windows. That is not unexpected, except perhaps to BNSF.

BNSF's claim that it will not substantially impair KCS operations is premised on BNSF operating through Rosebluff Yard during UP's window. If BNSF does not adhere to that commitment, then the Board has no evidentiary foundation to conclude that BNSF's operations will not substantially impair KCS's. "Just work it out" would be an abdication of the Board's statutory duty to determine whether BNSF's proposed operation is practicable and will not substantially interfere with KCS and UP operations. Either BNSF operates during UP's window or BNSF's Petition should be dismissed for failing to show that BNSF will not substantially impair KCS's service.

BNSF must also stay in UP's 'window' regardless of when that 'window' occurs. The evidence throughout this proceeding clearly demonstrates that the beginning and end of UP and KCS 'windows' in Rosebluff Yard is fluid. Years of operations have shown that fluidity is necessary and inevitable.²² Shipper delay, traffic volume spikes, equipment problems, track blockages and other issues regularly delay one or the other of the owners in completing its scheduled service on the Rosebluff Lead. See, e.g., O'Neal VS, Exhibit C at 9. Cutting off this flexibility to create a passage for BNSF at a set time, as proposed in BNSF's plan, would mean having to stop short of finishing the service that KCS and UP customers require. O'Neal VS at 6. Footnote 6 of Reilly's VS says, "While BNSF proposes 0730 for departure from Lacassine Yard, BNSF plans to be flexible on the departure time, depending on the operating circumstances on any given day." Accordingly, BNSF apparently agrees that it must be flexible to accommodate

²² O'Neal VS, Exhibit B at 6-7, Exhibit C at 9.

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changing schedules in Rosebluff Yard. To avoid substantial interference with KCS, BNSF must keep its operations through Rosebluff Yard within UP's 'window', whenever that window starts.

To hold BNSF to its commitment to operate through Rosebluff Yard in UP's window, the Board should impose a delay penalty on BNSF whenever BNSF operations delay KCS. Since BNSF began trying to push its trains onto the Rosebluff Lead in 2012, BNSF has ignored KCS whenever possible. BNSF has shown throughout this matter a continued, obdurate refusal to deal with KCS, beginning with its 2012 pronouncement to KCS that BNSF was going to use KCS's Rosebluff Lead property without KCS's permission and without compensating KCS.²³ BNSF's refusal to deal with KCS continues to this day, with BNSF proposing that it pay KCS nothing and that KCS deal with UP on compensation. Were it not for Board-ordered mediation and settlement negotiations, BNSF likely would not yet have talked to KCS about using KCS's Rosebluff Lead property. If the Board gives BNSF a 'just work it out' blank check, BNSF doubtless will revert to its operating plan of 'just get out of my way.' It is essential, therefore, that the Board hold BNSF to its operating plan to transit Rosebluff Yard during UP's window, and reinforce that plan with a penalty if BNSF fails to comply with its plan and delays KCS.

²³ "On May 24, 2012, BNSF notified UP of its intention to institute direct service to CITGO at Lake Charles. If KCS has a concern with the direct service authorized by the Board and memorialized in our agreements with UP, then it may initiate arbitration with UP under its agreement as suggested by the Board; but it may not unilaterally act to deny BNSF access." E-mail of Richard E Weicher to jwochner@kcsouthern.com, DReeves@KCSouthern.com and David T Rankin, Friday, December 14, 2012, 2:57 PM. Compare Bredenberg VS submitted Dec. 31, 2014, pages 2-3 (reciting that BNSF notified UP on May 24, 2012 that it intended to serve CITGO, that UP responded June 21 [Exhibit C to Bredenberg VS] that "BNSF would need operation concurrence from KCS in order to operate through the yard and related track," but referencing no communication with KCS until December, when BNSF attempted to move a train to CITGO). Even BNSF's operating plan in its Petition says, "will continue to be flexible to work *with UP* on a local operating level as adjustments may be needed." Reilly VS, Exhibit A at 2.

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D. BNSF Should Be Held To Its Commitment To Simply Pass Through Rosebluff Yard Without Performing Any Interchange, Setout Or Other Operations There

BNSF's operating plans, both for CITGO and for Lyondell, have argued that BNSF will not substantially impair KCS or UP because BNSF will simply pass through Rosebluff Yard without stopping. The Board should hold BNSF to that plan.

Rosebluff Yard is heavily congested, with cars occupying most or all of the tracks most of the time. Evidence shows that Tracks 2, 3, 5 and 6 are generally full of cars being held for customers or for interchange. Track 1 is used by KCS to access the major industrial facilities that it serves adjacent to the yard. Cars also are left on that track by one train for later switching by a subsequent crew. Track 4 is used to assemble outbound trains and land inbound trains, but is cleared out at the end of each carrier's window to make room for the other owner's train.

Given the heavy use of Rosebluff Yard tracks, any switching, interchange, setout, or other yard activities by BNSF would substantially impair KCS and UP operations. Often Track 4 is the only clear track in the Yard. If it is clear, it must be kept so to land inbound trains or for assembling outbound trains. Any activity by BNSF other than simply passing through the Yard will immensely complicate KCS and UP operations. BNSF's operating plan says it will simply transit the Yard in a continuous motion. Bredenberg VS at 7; Reilly VS Exhibit A at 2. BNSF should be held to that representation to avoid impairment of the owners' operations.

In short, to avoid substantial impairment of KCS's operations, BNSF must –

- operate through Rosebluff Yard only during UP's window, and must be penalized if it fails to do so;
- adjust its operations to coincide with the *actual* start and stop times of UP's window, not just the *scheduled* start and stop times;
- pass through the Rosebluff Yard without stopping or setting out or picking up traffic; and
- avoid interfering with or delaying UP's operations.

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IV. BNSF HAS FAILED TO PRESENT A COMPENSATION PROPOSAL CONSISTENT WITH CONDEMNATION PRINCIPLES; ITS PETITION SHOULD BE DENIED

Under the governing statute, “the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings.” 49 U.S.C. §11102(a). The statute also explicitly requires that “[t]he compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another.” Id. BNSF’s Petition does not meet either of these standards. Therefore, BNSF’s Petition should be denied because BNSF’s compensation and operating proposals together seek to create insurmountable competitive advantage for BNSF vis-à-vis KCS and UP.

BNSF’s proposal is to pay UP a bargain basement trackage rights fee and then for the Board to force UP to pay KCS an unspecified amount. The Board already said in Decision No. 3 that this proposal was inadequate; BNSF’s failure to propose something different is a failure to present a prima facie case. Moreover, BNSF’s proposal does not meet the statutory requirement because the fee that BNSF proposes was not set in accordance with condemnation principles and would simply result in UP and KCS continuing to subsidize BNSF, augmenting the substantial competitive operating advantage BNSF also seeks. If the Board is going to set the terms and conditions for BNSF access to Lyondell, which it should not do, at a minimum, BNSF should be required to pay KCS compensation for the use of KCS’s property and that fee should be consistent with the principles underlying ECP, or, at least be based upon market rates currently governing access in the Lake Charles area, as set forth in Subsection E below.

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A. BNSF's Petition Seeks To Establish An Insurmountable Operating And Cost Advantage Over KCS, Threatening The Competition The Board Sought To Create In 1996

BNSF's Petition seeks to tilt the competitive playing field so heavily toward BNSF that competing for traffic on the Rosebluff Lead will become extremely difficult for KCS, and perhaps for UP as well. In addition to BNSF's much larger network, which already has allowed BNSF to capture traffic once handled by KCS, BNSF's Petition seeks to foster BNSF's cherry-picking of Rosebluff Lead traffic with at least the following additional operational and cost advantages:

- No common carrier obligation –
 - BNSF to pick and choose which traffic it will access (e.g., Lyondell), and which it won't (e.g., CITGO)
 - BNSF avoids the burdens of switching traffic for UP and KCS, while UP and KCS are required to switch traffic for BNSF
- Unrestricted access, avoiding restrictions the owners found necessary to avoid congestion –
 - BNSF can pick up and deliver any number of cars to any location on request, avoiding 25-car unit restriction KCS and UP long ago agreed was necessary to avoid operational disruption when entering the zone that the other switches²⁴
 - Asks the Board to impose blanket access on request, regardless of operational effects
- No capital investment –

²⁴ One of the most fundamentally unfair results of Decision No. 3 is that BNSF was given greater access and operational flexibility to serve CITGO than what KCS, the half owner of the track and who has invested for seventy years in maintenance and growth of the infrastructure to serve CITGO and others, has. Under Decision No. 3, BNSF has the ability to directly serve CITGO (and Lyondell, if the Board grants BNSF's Petition) with less than 25 car blocks, but KCS must rely upon a UP reciprocal switch to serve these very same shippers, or can provide direct service in groups of 25 or more cars originating at a single location on a single bill of lading. KCS was not a merger applicant in the UP/SP merger. KCS was not given the "choice" to accept the Board's condition or not (see Decision No. 3 noting that UP had the choice to accept the merger condition). KCS has simply been told that the government is going to use its regulatory powers to grant KCS's larger competitor preferential access to KCS's own infrastructure.

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- BNSF gets to use 70 years of KCS and UP investment with no capital contribution
- BNSF doesn't have to add infrastructure needed to handle its traffic, shifting burden to KCS and UP to compensate with their own infrastructure dollars
- No maintenance cost or obligation – UP and KCS to maintain Lead at no cost to BNSF
- Access rate well below condemnation principles, as the Board found in 1996.

Granting the Petition would force KCS and UP subsidize BNSF by giving it these and other cost and operational advantages. That government-mandated subsidy would largely or wholly undermine the competitive environment the Board thought it was creating in 1996. If the Board grants BNSF's Petition, it must impose even-handed, market-based terms explained herein.

B. BNSF's Payment Proposal Was Already Found Inadequate By The Board; BNSF's Failure To Present Something More Warrants Denial Of The BNSF Petition

BNSF's compensation proposal is no different than its compensation proposal from 2013. The Board already found that proposal inadequate. BNSF's failure to come forward with something different is a failure to make a prima facie case, requiring denial of BNSF's Petition.

In its February 2013 application, BNSF said –

“[A]ny terminal trackage rights compensation due to KCS is the responsibility of UP. However, the Board should not require that such compensation payable by UP to KCS be established before BNSF begins use of the terminal facilities...”

BNSF Application at 15.

In ruling on BNSF's Application, the Board said –

While the Board would agree that the question of compensation had been settled by the BNSF and CMA Agreements if UP were the only owner of the Rosebluff Lead, the particular language in those merger conditions does not specifically address the existence of a third-party joint owner of the line. As a rail carrier owner of the terminal facilities under § 11102(a), KCS must have a role in establishing compensation for use of those facilities. Thus, all three carriers must attempt to agree upon the terms of compensation for BNSF's use of the Rosebluff Lead, given its ownership structure.

Decision No. 3 at 20.

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So saying, the Board refused to adopt BNSF's compensation idea for serving CITGO.

Now, in the BNSF Petition, BNSF simply reiterates the terms the Board already found inadequate –

To the extent that the Board requires additional time to establish compensation terms for BNSF's terminal trackage rights operations, BNSF requests that the Board impose the conditions of use and interim compensation terms within the deadlines specified above, to be reconciled once the Board ultimately establishes the final compensation terms...

BNSF's Petition at 1; and

BNSF should be responsible for payment to UP of the level of compensation that BNSF must pay for trackage rights under the UP/SP merger conditions – namely the rate set by Section 9 of the BNSF Settlement Agreement (the GTM rate), as escalated by Section 7 of the CMA Agreement (and as modified by BNSF and UP in the 50/50 Line Agreement) (collectively, the "Prescribed Fee"). UP should then be responsible for any compensation due to KCS for BNSF access to the Rosebluff Lead beyond the Prescribed Fee. *See* BNSF Opening Statement at 21-22 (Dec. 31, 2014); BNSF Rebuttal at 33-34 (Oct. 23, 2015).

BNSF's Petition at 15.

The Board should deny BNSF's Petition for failure to present a compensation proposal other than one the Board has already found inadequate. BNSF's Application was filed under 49 U.S.C. §11102(a). BNSF presents no evidence that its proposal is consistent with the principles of condemnation as required by Section 11102(a). Moreover, BNSF points to nothing in Section 11102(a) stating that the Board can order someone other than the trackage rights applicant to pay for the applicant's access. As there is no statutory basis for making someone else pay for BNSF's terminal trackage rights and there is no amount set, the Board cannot find that compensation is adequately secured under BNSF's proposal. In short, BNSF's proposal fails to meet any of the applicable standards of Section 11102(a).

At most, BNSF's proposal may be an attempt to sandbag KCS and UP and the Board, avoiding making a proposal, then waiting to see what KCS and UP say, and then finally

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submitting its proposal in the rebuttal stage hoping that KCS and UP will be procedurally precluded from responding. The Board should not allow BNSF to use this procedural maneuver, and if it does, KCS will certainly move to strike or request the opportunity to file sur-rebuttal. One thing is clear, however, and that is that BNSF's compensation approach is so deficient that the Board should deny BNSF's Petition.

C. The Fees Which BNSF Pays To UP Were Not Set According To Condemnation Principles

BNSF's Petition argues that BNSF should not have to pay any compensation to KCS. See BNSF's Petition at 17. Instead, BNSF proposes to pay UP the trackage rights fee that was established in the UP/SP merger conditions – namely the rate set by Section 9 of the BNSF Settlement Agreement (the GTM rate), as escalated by Section 7 of the CMA Agreement (and as modified by BNSF and UP in the 50/50 Line Agreement) (collectively, the “Prescribed Fee”). According to BNSF, UP would then be responsible for any compensation due to KCS for BNSF access to the Rosebluff Lead beyond the Prescribed Fee. *See* BNSF Opening Statement at 21-22 (Dec. 31, 2014); BNSF Rebuttal at 33-34 (Oct. 23, 2015) (arguing BNSF should only be required to pay what it will have to pay UP). BNSF claims that if the Board decides to set an access fee higher than what BNSF currently pays UP, then UP should pay KCS the difference.

BNSF's assertion that the trackage rights fee agreed between UP and BNSF is satisfactory compensation does not comport with Section 11102(a). First, that fee was agreed only between UP and BNSF and not KCS,²⁵ contrary to Board's requirement in Decision No. 3. Second, the fee was not established “under the principle controlling compensation” required in Section 11102. Both the Prescribed Fee and the switching fee that BNSF currently pays to UP

²⁵To be clear, KCS pays a considerably higher trackage rights fee to UP for KCS's access over UP lines than BNSF does for its access.

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were decided in 1996 as part of the UP/SP merger and involved commercial trade-offs, a fact that the Board itself recognized. UP/SP, Decision No. 47, 1 S.T.B. 591, 1996 STB LEXIS 264, *612 -*614 (STB served Sept. 9, 1996). These fees were not set in accordance with the principles used in condemnation cases, and only compensated the “fair market value” of the property involved if the commercial value to UP of its merger and of the trackage rights it received on BNSF, and the commercial value of access BNSF received on UP were included. BNSF's proposed compensation includes no such commercial value, particularly not to KCS, who BNSF proposes to pay nothing.

The Prescribed Fee is not a legally defensible approach. The Prescribed Fee is not ECP. It is not a market-based fee. It is not even SSW fee.

As the Board said:

UP/SP has explained that the compensation terms agreed to with BNSF, which we have found to be lower than what we would impose under SSW Compensation, were a component of a far broader arrangement through which UP/SP received other rights in return. ^[FN 33] [T]hese other rights... confer significant value to UP/SP.

FN33: Among the benefits UP/SP received from BNSF as components of this arrangement were: (1) trackage rights between Chemult and Bend; (2) trackage rights between Mojave and Barstow; (3) a proportional rate agreement for traffic moving over the Portland gateway; (4) improved access to the ports of Seattle, Portland, and Superior; and (5) new connections between UP/SP and BNSF in Illinois to permit more efficient access to UP/SP's facilities in Chicago.

See Decision No. 47, at *615.

It is clear from the above that the Prescribed Fee that UP agreed to with BNSF was only a portion of the compensation UP received including, among other things, BNSF's non-opposition to UP's proposed merger. But as a non-party to the merger, KCS received no such benefit and never bargained away its right to just compensation. So whatever payment BNSF currently pays to UP is irrelevant to the question of what just compensation is under Section 11102 pursuant to

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the principle controlling compensation in condemnation proceedings. BNSF has presented no evidence that its proposal to pay UP satisfies the principles controlling compensation in condemnation proceedings.

The Prescribed Fee and other fees from the UP/SP merger agreement reflect commercial trade-offs. They were not set consistent with the principle controlling compensation, as required by Section 11102(a). The request to pay only the Prescribed Fee should be denied.

BNSF is well aware that in Decision No. 3 the Board found that compensation due KCS under a Section 11102 case has not already been established in the UP/SP merger. See Decision No. 3 slip op. at 20 (“[a]s a rail carrier owner of the terminal facilities under § 11102(a), KCS must have a role in establishing compensation for use of those facilities.”). Having failed to present any evidence even attempting to satisfy the compensation standard of Section 11102(a), BNSF’s Petition should be denied.

Even if BNSF owed UP nothing more than what the UP/BNSF Settlement Agreement sets forth, either as a switching fee or a trackage rights fee, BNSF is still required to pay KCS a fee for the use of KCS’s property that is set in accordance with condemnation principles. Under Section 11102(a), BNSF must pay compensation directly to KCS in order to obtain terminal trackage rights. This access fee should be separate and apart from any agreement between UP and BNSF because compensation is not being set as part of a merger condition.

D. Setting Compensation Only At The Prescribed Fee Forces UP And KCS To Continue To Subsidize BNSF With The Potential Of Eventually Eliminating Competition

As noted earlier, the Board’s imposition of the Lake Charles Condition, and UP’s implementation of that condition through granting BNSF a reciprocal switch at a rate below market, has resulted in giving BNSF a competitive advantage. It has allowed BNSF to obtain a significant market share without any contribution toward capital infrastructure or maintenance.

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Now, BNSF seeks yet a further competitive advantage – direct trackage rights to Zone 2 shippers with no capital investment; no common carrier obligation; no limit on size of trains; and no payment to KCS. Such terms are far better terms than what KCS has, and KCS is a joint owner of the tracks.

The Board should not adopt such a proposal. The terms BNSF seeks would so competitively advantage BNSF that such terms could effectively extinguish KCS's, and perhaps UP's, ability to compete for a large portion of Rosebluff Lead traffic. Such an action is completely inconsistent with the overarching goal of the Lake Charles Merger Condition, which according to the Board was to preserve rather than destroy competition. In Decision No. 3, the Board explained, based on the agency's previous competitive analysis, that the Board imposed conditions specifically to "preserve competition for Lake Charles area shippers." See Decision No. 3, slip op at 3 (discussing UP/SP Decision No. 44, at *428.). Twenty-two years later BNSF argues that direct access is necessary to preserve competition, but despite the Board telling BNSF that compensation remains at issue in the proceeding, "BNSF [continues to contend[s] that BNSF should be responsible for payment to UP of the Prescribed Fee, and that UP should then be responsible for any compensation due to KCS for BNSF access to the Rosebluff Lead beyond the Prescribed Fee."²⁶

The Board should fully understand that forcing KCS and UP to subsidize BNSF will eventually inhibit, not promote, competition. KCS and UP will no longer have any incentive to invest in infrastructure when they are not able to recoup that investment. One only needs to read the Association of American Railroad's comments in Ex Parte No. 711, comments which BNSF

²⁶ See Responses to Interrogatory No. 1(a)-(b), Responses and Objections of BNSF to the Kansas City Southern Railway Company's Second Set of Discovery Requests to BNSF (served June 11, 2018) (Attached as Exhibit B).

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joined, to understand how granting shippers' access to another carrier at rates that do not provide for lost profits will eventually result in less capacity, worse service, and less competition.²⁷

Here, the rate that BNSF proposed to pay is not consistent with ECP, market rates or the principle controlling compensation in condemnation cases. This creates an unlevel playing field. KCS must be compensated in a manner that allows it and UP to not only cover maintenance and capital costs, but also contribute to profits so that KCS and UP can obtain revenue adequacy.

The current rate or BNSF's proposed rate does not meet that test.

E. The Fifth Amendment Principles Of Just Compensation Require BNSF To Compensate KCS At A Rate That Accounts For Lost Profits And Allows KCS To Achieve Revenue Adequacy

The "Takings Clause" of the Fifth Amendment states that "private property [shall not] be taken for public use, without just compensation." U. S. Const. amend. V. "Just compensation is provided for by the Constitution and the right to it cannot be taken away by statute." Seaboard A. L. R. Co. v. United States, 261 U.S. 299, 43 S. Ct. 354, 304 (1923). The takings clause "protects private property without any distinction between different types." Horne v. Dep't of Agric., 135 S. Ct. 2419, 2426 (2015) (requiring the government to provide just compensation to raisin farmers for a taking of their raisins). Even a partial taking of physical property requires just compensation under the Takings Clause. Loretto v. Teleprompter Manhattan Catv Corp., 458 U.S. 419, 102 S. Ct. 3164, 421 (1982) (holding that a state statute requiring the installation of a cable box on an apartment building constituted a taking requiring compensation to the building owner).

²⁷ See also, Opening Comments And Evidence Of BNSF Railway Company, Reciprocal Switching, EP 711, at pages 11-13 (Filed October 26, 2016).

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“Just compensation . . . means in most cases the fair market value of the property on the date it is appropriated.” Kirby Forest Indus. v. United States, 467 U.S. 1, 104 S. Ct. 2187, 10 (1984) (applying just compensation in a condemnation proceeding). “Under this standard, the owner is entitled to receive what a willing buyer would pay in cash to a willing seller at the time of the taking.” *Id.* “In addition to the value of the property actually taken, just compensation includes severance damages — the diminution in value in the owner’s remaining property resulting from the taking.” Childers v. United States, 116 Fed. Cl. 486, 497 (2013). Even “where something less than the owner’s entire property is taken, the Fifth Amendment permits compensation not only for the value of the part taken, but also for the diminution in the value of the owner’s remaining property.” Wash. Metro. Area Transit Auth. v. United States, 54 Fed. Cl. 20, 27 (2002). See also Ashley Mas, Eminent Domain Law and “Just” Compensation for Diminution of Access, 36 Cardozo L. Rev. 369, 398 (2014) (advocating that Courts should use a “Before and After” test of fair market value to determine just compensation in takings cases under the Fifth Amendment).

Under the Fifth Amendment’s Takings Clause, KCS is entitled to the fair market value of what is being taken, which includes lost profits. This is difficult to apply in the context of a Section 11102(a) proceeding, especially given that there is very limited, if any, precedent on the compensation issue in a Section 11102(a) proceeding. However, given that BNSF’s proposal is clearly not consistent with the statute; KCS suggests that the Board apply the ECP methodology.²⁸

²⁸ See InterVISTAS Report, Section 7.7 at 108-110; Eric Beshers, Hagler Bailly Services, Inc., Volpe National Transportation Systems Center, Efficient Access Pricing For Rail Bottlenecks (Volpe National Transp. Systems Center, June 1, 2000); and Nicolas Economides, Lawrence J. White, Access And Interconnect/On Pricing: How Efficient Is The "Efficient Component Pricing Rule"? (The Antitrust Bulletin, Fall 1995); see also, Opening Comments And Evidence Of The

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Realizing the difficulty associated with applying ECP, one potential substitute that is consistent with condemnation principles and the Fifth Amendment would be to look at the market rate that a willing buyer would pay a willing seller under similar situations. In this instance, the commodity being sold is access to the rail line rather than the rail line itself, but in a market-based economy, there remains a price that a seller is willing to pay for access to its line and its shippers and a buyer would be willing to accept for such access.²⁹

There is no directly comparable market rate by which UP, KCS, or BNSF have given each other access to another shipper on the Rosebluff Lead via terminal trackage rights. The closest substitute is to examine a comparable switching rate that UP charges KCS for access to Lake Charles and then remove the portion of that fee that approximates the costs associated with that switch. The resultant fee approximates the remaining contribution to the railroad's efforts to achieve revenue adequacy.³⁰ One would have to add the variable costs to cover the tenant's contribution to the landlord's costs so as to account for the presence of the tenant's trackage rights. There should likewise be standard rate escalations and penalties for operational delays or interference caused by the presence of the tenant.

Applying this model to BNSF's request to access Lyondell, BNSF should pay i) a per car fee; ii) its fair share of maintenance on a usage basis (as UP and KCS do); and iii) a delay charge for any operational delays caused by the presence of BNSF's trains. Based upon existing UP

Kansas City Southern Railway Company, Reciprocal Switching, EP 711, at pages 47-49 (Filed October 26, 2016).

²⁹ Economic analysis indicates that efficiency would best be promoted if access to those network services was based on market value. See Daniel F. Spulber and Christopher S. Yoo, Access to Networks: Economic and Constitutional Connections, 88 Cornell L. Rev. 885, at 891 (2003) Available at: <http://scholarship.law.cornell.edu/clr/vol88/iss4/1>.

³⁰ Of course, depending upon the market conditions, the amount of contribution may be more or less than was is required to achieve revenue adequacy.

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reciprocal switching charges to Lake Charles, BNSF should compensate KCS at \$ [REDACTED] per car. This rate derives from the \$350.00 per car reciprocal switching charge that UP charges KCS for switching cars to the Lake Charles Harbor and Terminal District,³¹ less \$ [REDACTED] which KCS and UP charge each other as an approximation of the costs of providing reciprocal switching on the Rosebluff Lead. UP and KCS split the maintenance costs of the Rosebluff Lead on a per car use basis, so BNSF would share in those costs in proportion to its usage.

BNSF should also pay an \$842.00 per hour train delay charge if BNSF train operations cause delays to UP or KCS operations because BNSF operations do not conform to agreed parameters for BNSF train movements. The proposed train delay charge is an amount advocated by BNSF in a case where BNSF incurred train delay from damage to one of its bridges, and is consistent with BNSF's position that its operations would not unreasonably interfere with KCS and UP operations.³²

If all of the above is agreed to, these charges would become part of a complete access agreement. The agreement would also need to include liability and other standard protections for KCS. It should also include a rate escalator to keep the rate current with railroad costs (e.g., 70% of RCAF-U).

KCS's proposal is not ECP, which should be the applicable approach, although KCS's proposal is a market based approach. Market-based rates are a better indicator of fair market value than government-set regulation, and such a proposal is generally consistent with the Fifth Amendment and condemnation principles. In contrast, BNSF has shown no relationship

³¹ See UP's Reciprocal Switching Tariff.
https://www.up.com/cs/groups/public/@uprr/@customers/documents/up_pdf_nativedocs/pdf_up_shortline_current_recip.pdf, pg. 23.

³² *In re Matteson Marine Serv.*, No. 08-cv-4023, 2011 U.S. Dist. LEXIS 75168, *48 -*50; *53 -*60 (C.D. Ill. July 13, 2011).

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whatsoever between its proposal and the principles governing compensation in condemnation; indeed, all available evidence shows BNSF's proposal does not confirm to that statutory mandate.

CONCLUSION

For the above-stated reasons, BNSF's Petition to set terms and conditions should be denied. BNSF has not established that (1) Decision No. 3 could grant BNSF access to shippers other than CITGO; (2) service to Lyondell meets the public interest standard; (3) Decision No. 3 allows BNSF to get on and off the Rosebluff Lead in order to serve shippers not directly on or adjacent to the Rosebluff Lead; or (4) BNSF presently has the legal or contractual right to use industry tracks to provide direct service to Lyondell. Additionally, BNSF has failed to put forth a compensation proposal that meets the statutory requirements and continues to argue it should pay *nothing* to KCS. If BNSF's Petition is not denied entirely, the STB should follow KCS's methodology for setting compensation terms that adequately reimburses KCS for the fair market value of its property and it should adopt operating protocols to ensure that BNSF's operations do not interfere with KCS's operating windows.

Respectfully submitted,

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June 25, 2018

Attorneys for The Kansas City Southern
Railway Company

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of The Kansas City Southern Railway Company's Reply to BNSF Railway Company's Opening Statement as Supplemented on May 11, 2018 was served by first-class mail, postage prepaid, or by a more expeditious manner, this 25th day of June, 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

PUBLIC VERSION

**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**

**KCS'S REPLY TO BNSF RAILWAY COMPANY'S OPENING STATEMENT AS
SUPPLEMENTED ON MAY 11, 2018**

EXHIBIT A

**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**

**VERIFIED STATEMENT OF DAVID O'NEAL,
DIVISION SUPERINTENDENT, OPERATIONS, SOUTH DIVISION
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

My name is David O'Neal. I am the Division Superintendent, Operations in the South Division of The Kansas City Southern Railway Company ("KCS"). I report to the General Manager of the South Division, who reports to KCS's Vice President of Transportation. My office is in Houston, TX. The area of operations under my supervision includes the Lake Charles area.

I am providing this statement to address issues raised by the January 12, 2018 petition ("Petition") of BNSF Railway Company ("BNSF"). That Petition asks the Surface Transportation Board ("STB" or "Board") to set terms for access by BNSF over the Rosebluff Lead and connected tracks, including the Montell Lead, to LyondellBasell ("Lyondell").

My statement focuses on operational aspects of BNSF's proposed access to Lyondell. I have seen that the statute referred to throughout BNSF's Petition, 49 U.S.C. §11102(a), requires BNSF to show that its proposed service is "practicable ... without substantially impairing the

ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.” This statement addresses those requirements.

KCS owns a one-half interest in the Rosebluff Lead. The deed attached as Exhibit A shows that in 1947, KCS and the Texas and New Orleans Railroad Company together purchased a surplus rail line from the U.S. government. The line consisted of 4.788-miles of main lead track and 1.635-miles of other track, and attendant right-of-way. Included in the other track were “two storage tracks, 2,996.5-feet and 2,627.8-feet in length, located near point of beginning of main lead at place commonly known as ‘Rosebluff Yard.’” Through the years, KCS and UP and its predecessors developed this lead and other track into the nine-miles of lead track and six-yard tracks described in BNSF’s 2014 application and in the Petition.

As described by previous KCS witnesses in this case, KCS and UP each primarily operate different sections of the Rosebluff Lead, but both share and take turns operating in Rosebluff Yard. KCS operates the Zone 1 portion – the north portion proximate to Rosebluff Yard – and UP operates Zone 2, south of Bayou D’Inde. The prior statements of Richard Bartoskewitz and Jimmy Wayne Scott concerning operations on the Rosebluff Lead remain valid descriptions of those operations, and I am attaching their statements as Exhibits B and C to this statement for reference.

In addition to their statements, I would say that through significant effort in the past 2 or 3 years, KCS and UP have been able to somewhat reduce the variability in when each party’s actual operating windows in Rosebluff Yard begin and end. As noted in prior testimony, UP’s ‘window’ to operate in Rosebluff Yard¹ is scheduled to run from 0600 to 1800, while KCS’s

¹ While this statement, like previous filings and decisions in this case, uses the term ‘window’ or operating ‘window’ to describe when KCS or UP can, by agreement between the two Rosebluff Yard owners, occupy the yard, ‘window’ is really a misleading term. ‘Window’ implies

'window' is scheduled from 1800 to 0600 (i.e., overnight). However, both Mr. Bartoskewitz and Mr. Scott described that frequently either UP or KCS would be delayed in clearing out of Rosebluff Yard, delaying the beginning of the other party's 'window.' These delays tended to cascade and often continue for several days before the parties could get back on schedule. While these types of cascading delays still occur, their frequency has been somewhat reduced through considerable effort and planning by UP and KCS.

Being able more frequently to keep to its scheduled operating 'window' in Rosebluff Yard allows KCS to better meet our shippers' needs. As noted by Mr. Bartoskewitz and Mr. Scott, KCS operates two jobs in Rosebluff Yard daily, except Saturday and Sunday when only one of the jobs operates. These two jobs divide responsibilities for serving the approximately half dozen large shipper facilities adjacent to Track 1 in Rosebluff Yard or a short distance south of the Yard.² Adhering to the planned schedule for when KCS can enter Rosebluff Yard enables our customers to better schedule their employees and their operations that involve our pickup and delivery of cars to their plants.

Maintaining a consistent schedule also avoids unnecessary costs to KCS. The crew for RLC210, the first of the 2 KCS jobs in Rosebluff Yard, is scheduled to arrive for work at 1700 hours, to begin moving their train at 1800, the beginning of KCS's scheduled 'window' in the Yard. When UP departure from the Yard is delayed, the RLC210 crew's time is wasted, waiting

something clear or open, whereas the UP and KCS operating 'windows' are really busy, congested times in the yard. Normally, all tracks in the yard are occupied during an operating 'window.' Therefore, while I will use the term 'window' to describe each carrier's work shift in Rosebluff Yard, I note that the term does not mean a clear or open time in Rosebluff Yard.

² A short distance south of Rosebluff Yard, KCS serves BW Services, whose tracks break off #3 Storage Track (Track 073 on KCS SLIC Book maps attached as Exhibit 4 to Mr. Scott's statement) south of where Yard Tracks 001 and 002 connect to Yard Track 003 to form Track 073 at the southwest end of the Yard.

to get to their assignment. Similarly, the RLC304 crew is scheduled to arrive for work at 2359 to be taxied over to Rosebluff Yard and use the same locomotives being operated by RLC210. When RLC210 has been delayed starting its work, the RLC304 crew's access to the locomotives usually is likewise delayed. These delays are wasteful and costly to KCS.

As the Board has recognized,³ BNSF's repeated sworn testimony in its operating plan has been that BNSF would operate through Rosebluff Yard during UP's 'window' in the Yard. Decision No. 3 at 14 ("BNSF has proposed to operate all of its direct trains during UP's daily 12-hour window of operations at the Rosebluff Yard. (See BNSF Final Brief 14; Bredenberg Rebuttal V.S. 6, 8.)") This representation is crucial to assessing the impact of BNSF's operating plan on KCS. However, when KCS points out that BNSF's plan relies on this representation, BNSF tries to back away from its testimony, suggesting that the Board should just 'let the parties work it out' if BNSF does not stick to its plan.

Just 'let the parties work it out' really means that BNSF has no operating plan. Asserting that BNSF will not substantially impair KCS service because BNSF will operate in UP's 'window' in Rosebluff Yard, but then saying BNSF will not adhere to that limitation, means either BNSF will substantially impair KCS operations or that BNSF has no idea whether or how much it will impair KCS's operations. Under either of those possibilities, BNSF has not satisfied the statutory language quoted above.

It is important to KCS that BNSF be held to its testimony that its operations through Rosebluff Yard will be during UP's 'window' there. My understanding is that UP agrees to

³ "BNSF has proposed to operate all of its direct trains during UP's daily 12-hour window of operations at the Rosebluff Yard.... BNSF argues that its direct service will not negatively affect KCS's operations because the BNSF trains would operate solely during UP's operating window at the Yard." Decision No. 3 at 14 (STB served Jul. 5, 2016).

BNSF's moves through Rosebluff Yard being confined to UP's 'window' in the Yard. Therefore, there is no reason not to require BNSF to adhere to that commitment. To do otherwise – to just 'let the parties work it out' – would leave everyone with no idea what impact BNSF's proposed operation would have, and would be interpreted by BNSF as license to do whatever it wants. It would be a great disservice to KCS and the shippers it serves for the Board to disregard BNSF's testimony and leave BNSF free to roam at will on the Rosebluff Lead.

To avoid substantial impairment of KCS, BNSF must be required to operate through Rosebluff Yard in UP's 'window.' Absent that requirement, BNSF will delay KCS unknown amounts of time, foisting untold expense onto KCS and untold inconvenience or operational interruption onto KCS's customers. Requiring that BNSF operate through Rosebluff Yard during UP's window is essential to avoid substantial impairment of KCS's service.

To enforce BNSF's discipline in staying within UP's Rosebluff Yard "window," KCS believes that any access granted BNSF must come with a penalty for delaying KCS' operations in Rosebluff Yard. As discussed above, operational delay causes expense to KCS and operational inconvenience or business interruption to shippers KCS serves. Whether by extending UP's 'window' in Rosebluff Yard so that KCS's 'window' is delayed or by seeking to transit Rosebluff Yard during KCS's window, BNSF should be required to pay a penalty for delaying KCS. The pleading attached to this statement discusses the recommended amount of that penalty.

Further, it must be clear that BNSF cannot stop or interchange in Rosebluff Yard. BNSF claims that a major benefit of its operating plan is that cars moving to or from customers that BNSF chooses to serve will not take up space in Rosebluff Yard. BNSF's operating plan repeatedly predicts a quick transit through the Yard. BNSF should be held to these

representations, and should not be allowed to pick up, drop off or interchange any traffic in Rosebluff Yard.

To avoid substantial interference with KCS, BNSF must also stay in UP's 'window' regardless of when that 'window' occurs. As the statements of Messrs. Bartoskewitz and Scott clearly demonstrate, the beginning and end of UP and KCS 'windows' in Rosebluff Yard is fluid. Years of operations have shown that this is necessary and inevitable. Whether caused by shipper delay, traffic volumes, equipment problems, a track blockage or something else, one or the other of the owners is often delayed in completing its scheduled service on the Rosebluff Lead. Cutting off this flexibility to create a passage for BNSF at a set time, as proposed in BNSF's plan, would mean having to stop short of finishing the service that KCS and UP customers require. To avoid substantial interference with KCS, BNSF must keep its operations through Rosebluff Yard within UP's 'window', whenever that window starts.⁴

Finally, to avoid substantial impairment of KCS service, BNSF must avoid substantial impairment of UP's service. As Mr. Bartoskewitz, Mr. Scott and others have made abundantly clear, UP and KCS conduct tightly coordinated operations in a crowded, constrained area. Making way for a third carrier's operations will inevitably place greater stress on the operations. Therefore, it is not enough merely that BNSF not substantially impair KCS's operations directly; BNSF also must not substantially impair KCS's operations indirectly by substantially impeding UP's operations. If UP's operations are slowed, interrupted or prevented, UP's service will take longer and/or be more spread out than at present. These delays or occupying added track will push UP into the way of KCS, impairing KCS's service. To avoid substantial impairment of

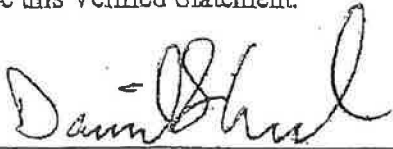
⁴ There is a lengthy scale track along the UP-BNSF 50/50 Line, near the entrance of the Rosebluff Lead, where BNSF trains could hold if necessary to await the start of UP's 'window.'

KCS's operations, BNSF also must not substantially impair UP's operations that have to dovetail with KCS's operations for all shippers' needs on the Rosebluff Lead to be met.

VERIFICATION*

I, David O'Neal, under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed June 25th, 2018



David O'Neal

*Form used pursuant to 28 U.S.C. §1746(2)

**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**

**VERIFIED STATEMENT OF DAVID O'NEAL,
DIVISION SUPERINTENDENT, OPERATIONS, SOUTH DIVISION
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

EXHIBIT A

DEED

KNOW ALL MEN BY THESE PRESENTS THAT:

RECONSTRUCTION FINANCE CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the United States, which corporation has succeeded, pursuant to the provisions of Public Law 109, 79th Congress, approved June 30, 1945, to all the rights and assets of DEFENSE PLANT CORPORATION, and the UNITED STATES OF AMERICA, (both jointly hereinafter referred to as "Vendor"), both acting by and through the War Assets Administrator under and pursuant to Executive Order 9689, dated January 31, 1946, and the power and authority contained in provisions of the Surplus Property Act of 1944, (58 STAT 765) and War Assets Administration Regulation No. 1, as amended, (12 FR 863), herein represented by Cannon D. Clark, Deputy Regional Director, Office of Real Property Disposal, New Orleans, Louisiana, duly authorized by a Delegation of Authority of the War Assets Administrator, executed on November 22, 1946, hereto attached, does hereby grant, bargain, sell, convey, assign, and deliver without warranty, recourse, or liability whatsoever, even as to the restitution of the purchase price, but with full substitution and subrogation in and to all rights and actions of warranty against all preceeding owners and vendors, unto the TEXAS AND NEW ORLEANS RAILROAD COMPANY, a Texas corporation, appearing herein and accepting these presents by and through R. W. Barnes, its Vice-President, duly authorized, pursuant to a resolution adopted by its Board of Directors on May 12, 1947, a certified copy of which is annexed hereto, and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation, appearing herein and accepting these presents by and through ^{Executive} W. D. Burch, its General Agent, duly authorized, (both jointly hereinafter called "Purchaser"), their successors and assigns, all and singular, the following described property situated in the Parish of Calcasieu, State of Louisiana, which said property has been duly declared surplus to the War Assets Administrator pursuant to the provisions of the above mentioned statutes and regulations:

I. Main industrial lead track extending approximately 4.83 miles in a general southerly and southwesterly direction beginning at point of connection with Kansas City Southern Railway Magnesium Plant track at engineer station 0/00, said point being near northeast corner of southeast quarter of Section 33, Township 9 South, Range 9 west in Calcasieu Parish, Louisiana, except that first 200 feet of track owned by K.C.S. Railway is not included, and ending at engineer station 254/85 at north line of Public Highway located along south line of Section 18, Township 10 South, Range 9 west in Calcasieu Parish, Louisiana; two storage tracks, 2,396.6 feet and 2,627.8 feet in length, located near point of beginning of main lead at place commonly known as "Rosebluff Yard"; one storage track, 1,874.4 feet in length, near end of main lead; turnout connections for three tracks, approximating a total of 727 feet of track, diverging from said main lead track and for two tracks, approximating a total of 407 feet of track, diverging from storage track, all situated within said Section 18, and lying within main lead right-of-way of normal width of 50 feet each side of center line of main lead track; drainage structures under trackage and roads, consisting of various diameter concrete pipes, box culverts, timber trestling and steel girder span; highway crossing signs, private road crossing and public road crossing improvements; and other improvements of any nature pertaining to construction or operation of all trackage described; total mileage of trackage described herein above amounting to 4.788 of main lead track and 1.836 miles of other track, it being understood that turnout connection to so-called Maplewood industry spur is not included in trackage involved. All "Stations" herein referred to are delineated on a plat of survey prepared by F. Shutte' Son, dated June 7, 1943, revised March 22, 1946, and April 22, 1946; a print of which is attached hereto and made a part hereof for reference.

II. The following servitudes, rights-of-way, and easements:

1. A right-of-way and servitude for the construction, operation, renewing, alteration, inspection, and maintenance of a railroad track or railroad tracks, together with all sidings, switch tracks, constructions, buildings, and/or appurtenances connected with or incidental to the construction, operation, and maintenance of a railroad and railroad track or tracks upon, over, across, under and through the following described land together with the right of ingress to and egress from the property together with all of the rights and privileges and appurtenances which may be required for the full enjoyment of said rights together with the right to construct, operate and maintain telephone and telegraph lines and together with the privilege of removing at any time any and all of the said improvements, said right-of-way being one hundred (100) feet wide and measuring fifty (50) feet on each side of the following described center lines:

- a. (Referred to for identification purposes as Tract No. 1) Beginning at a point 793.4 feet west and 358 feet south of the northeast corner of the northeast quarter of the southeast quarter of Section 33, Township 9, South, Range 9 west, southwest district of Louisiana

thence north 61° 15' east, 464 feet to the center line of the Kansas City Southern Railway spur at Station 105 plus 00 of said spur serving the Magnesium Plant, containing approximately five tenths (.5) of an acre.

Being the same right-of-way acquired by Defense Plant Corporation from the Mathieson Alkali Works, Inc., by deed dated October 20, 1944, bearing file number 317927 and recorded in Book 378 at Page 232 of the records of Calcasieu Parish.

- b. (Referred to for identification purposes as Tract No. 2) Beginning at a point in the center of the North-South public road from U. S. Highway No. 90 to the Magnesium Plant, said point being 793.4 feet East and 358 feet South of the Northeast corner of the Northeast Quarter of the Southeast Quarter (NE 1/4 of SE 1/4) of Section 33, Township 9 South, Range 9 West, Thence South 68° 15' West to the West line of the Northeast Quarter of the Southeast Quarter (NE 1/4 of SE 1/4) of said Section 33, containing approximately 1.3 acres.

- c. (Referred to for identification purposes as Tract No. 27) Over and across the Northeast Corner of the Southwest Quarter of the Southeast Quarter (SW 1/4 of SE 1/4) of Section 33, Township 9 South, Range 9 West, southwestern district of Louisiana, being 100 feet wide, 50 feet on each side of the center line of said main lead track and containing approximately .1 of an acre of land.

"b" and "c" being the same rights-of-way acquired by Defense Plant Corporation from Lock Moore & Co., Ltd., by right-of-way deed dated February 26, 1944, bearing file number 308644 and recorded in Book 370, Page 151 of the records of Calcasieu Parish.

- d. (Referred to for identification purposes as Tract No. 3) Beginning at a point nineteen and one-half (19 1/2) feet North of the Southwest corner of the Northwest Quarter of the Southeast Quarter (NW 1/4 of the SE 1/4) of Section 33, Township 9 South, Range 9 West, Southwestern District of Louisiana. Thence North 65° 15' east, across said Northwest Quarter of Southeast Quarter (NW 1/4 of SE 1/4) to the east line of same and containing approximately 3.5 acres.

Being the same right-of-way acquired by Defense Plant Corporation from Sam Love, Christ Love, and Norfolk Love by deed dated February 28, 1946, filed for record in Conveyance Book 397, page 283; and from Margaret Gordon by deed dated May 14, 1946, filed for record in Conveyance Book 403, page 8; and from Anna G. Byars by deed dated May 14, 1946, filed for record in Conveyance Book 403, page 9.

- e. (Referred to for identification purposes as Tract No. 13) Beginning at a point approximately at the NE corner of said Section 5; Township 10 S Range 9 W. Thence S 63° 15' W 1520 feet, more or less, to the West line of the NE 1/4 of SE 1/4 of Section 5, and containing approximately 3.4 acres.

Being the same right-of-way acquired by Defense Plant Corporation from Edgar Miller, Ernest Miller, Mrs. Hannah L. Monday, Mrs. Hilma E. Bachsen, Elaine L. Benckenstein, Mrs. Solma L. Martinez Fla, and Mrs. Irma L. Tieman by deed dated May 8, 1944, filed for record May 16, 1944, in Conveyance Book 370, page 488.

- e.(1) Referred to for identification purposes as Tract No. 13 Supplement Beginning at a point approximately

57 feet north of the southwest corner of the NE 1/4 of the N E 1/4 of Section 5, Township 10 South, Range 9 West. Thence North 63° 15', east 1320 feet, more or less, to the east line of the NE 1/4 of the NE 1/4 of Section 5, and containing approximately 3.4 acres.

Being the same right-of-way acquired by the Defense Plant Corporation from the Cities Service Refining Corporation by deed dated October 21, 1944, and recorded in Book 362, page 13 of the records of Calcasieu Parish.

f. (Referred to for identification purposes as Tract No. 14)

Beginning at a point approximately 57 feet North of the Southeast corner of the N 1/2 of the NE 1/4, of Section 5, T 10 S, R 9 W. Thence S 63° 15' W, 127 feet more or less to the South line of said N 1/2 of the NE 1/4 of Section 5, and containing approximately .2 of an acre.

Being the same right-of-way acquired by Defense Plant Corporation from Cities Service Refining Corporation by right-of-way deed dated February 2, 1944, bearing file number 305935 and recorded in Book 364, page 487 of the records of Calcasieu Parish.

g. (Referred to for identification purposes as Parcel 1

of Tract No. 28) Beginning at a point on the W line of Section 18, Township 10 South, Range 9 West, which is 681.4 feet West of the NE corner of the NW 1/4 of said Section 18, thence S 15°, 18' W to the S boundary of the NE 1/4 of the NW 1/4 of Section 18, and 238.7 feet E of the SW corner of the NE 1/4 of the NW 1/4 of Section 18 containing 3.15 acres, more or less.

Being part of that land received in fee by deed from the Cities Services Refining Corporation to Defense Plant Corporation dated August 25, 1944, and recorded in Book 375 at Page 285 of the records of Calcasieu Parish. It being the intent to herewith convey only a servitude as before described over said land.

g.(1) (Referred to for identification purposes as Parcel 2

of Tract No. 28) Beginning at a point on the South line of the Northeast Quarter of Northwest Quarter, Section 18, Township 10 South, Range 9 West, Southwestern District of Louisiana; said point being the center of the railway right-of-way, and 288.7 feet North 89° 59' East, from the Southwest corner of said Northeast Quarter of Northwest Quarter. Thence South 15° 16' West, 488.7 feet to Station 219 plus 98.7 of the railway survey; said point being the point of a 30° curve to the left, whose length is 508.9 feet, whose radius is 1910.1 feet and whose angle of intersection is 15° 16'. Thence, from the above described point of curve, southerly around said curve to the left a distance of 508.9 feet to Station 225 plus 07.6. Thence due South 371.5 feet to the East and West center line of Section 18. Thence due South 2806.5 feet to a point 50 feet North of the South line of said Section 18, Township 10 South, Range 9 West.

Said right-of-way containing 9.08 acres, in Calcasieu Parish, Louisiana; being that land received in fee by deed from the Cities Service Refining Corporation to Defense Plant Corporation dated August 25, 1944, and recorded in Book 376, Page 43 of the records of Calcasieu Parish.

Excluded from the 100 foot right-of-way, herewith conveyed, are two valve gas reduction stations on the West or right side of the railway center line; the first one lying between Station 252 plus 54.2 and Station 252 plus 83.2 and whose East boundary is located 36.5 feet West or to the right of the center line of the railroad and whose West boundary is the East boundary of the Firestone tract which is located ninety-five (95) feet West of the center line of said railway, and the second between Station 253 plus 81.5 and 254 plus 82, the East boundary of this tract lies 35 feet West or right of the center line of the main line railway and the West boundary is the East line boundary of the Firestone tract which is ninety-five (95) feet West of the center line of the railway. It being the intent to herewith convey only a servitude as before described over said land.

2. A perpetual easement for the construction, use, operation, maintenance, repair, and removal of a railroad track or tracks, a pipeline or pipelines, and electric power, telephone and telegraph lines, poles, towers, and guys 100 feet in width, over and across the following parcels of land, all located in Township 9 South, Range 9 West, 50 feet on each side of a center line, said easement being more particularly described as follows:

- a. (Referred to for identification purposes as Tract No.4)
Beginning at a point where the center line of said railroad track intersects the center line of Section 33, said point being located S 63° 15' W, 2523 feet from the switch point of said railroad track where it connects with a spur track of Kansas City Southern Railway which serves the Magnesina Plant; Thence in a northerly direction along the center line of said Section 33 to a point distant 50 feet northwest of the center line of said railroad track as measured at right angles thereto.

Thence S 63° 15' West along a line parallel to the center line of said railroad track and distant therefrom 50 feet to a point in the dividing line between lands of Primus Haynes and lands of Pinky Mayo, said point being in the line dividing the SE 1/4 of SW 1/4 from the NE 1/4 of SW 1/4 of said Section 33.

Thence in an easterly direction along the dividing line between lands of Primus Haynes and lands of Pinky Mayo, said dividing line coinciding with the dividing line between the SE 1/4 of SW 1/4 and the NE 1/4 of SW 1/4 of said Section 33, to a point in the center line of the S 1/2 of said Section 33. Thence northerly along the center line of said Section 33 for a distance of 19.5 feet to the point of beginning.

The above described right-of-way being a triangular shaped parcel of land lying in the extreme Southeast corner of the NE 1/4 of SW 1/4 of said Section 33, containing an area of 0.13 acres, more or less.

- b. (Referred to for identification purposes as Tract No.5)
Beginning at a point where the center line of said railroad track intersects the dividing line between lands of Pinky Mayo and lands of Primus Haynes, said point being in the dividing line between the SE 1/4 of SW 1/4 and the NE 1/4 of SW 1/4 of said Section 33.

Thence along the center line of said railroad track S 63° 15' W to a point in the dividing line between lands of Pinky Mayo and lands of Rose Williams, et al, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track.

The above described right-of-way being located in the extreme northeast corner of SE 1/4 of SW 1/4 of said Section 33, containing an area of 1.28 acres, more or less.

- c. (Referred to for identification purposes as Tract No. 6)
Beginning at a point in the intersection of the lands of Thompson E. Dietz, et al, and the lands of Rose Williams, et al, said point also being in the intersection of the lands of Pinky Mayo, said point being located 445 feet westerly of the center line of said Section 33.

Thence in an easterly direction along the dividing line of the lands of Thompson E. Dietz, et al, and the lands of Pinky Mayo, to a point distant 50 feet southeast of the center line of said railroad track.

Thence S 63° 15' W along a line parallel to the center line of said railroad track and distant therefrom 50 feet to a point in the dividing line between the lands of Thompson E. Dietz, et al, and the lands of Rose Williams, et al.

Thence northerly along the dividing line between the lands of Thompson E. Dietz, et al, and the lands of Rose Williams, et al, to the point of beginning.

The above described right-of-way being a triangular shaped parcel of land lying in the SE 1/4 of SW 1/4 of said Section 33, containing an area of 0.08 acres, more or less.

- d. (Referred to for identification purposes as Tract No. 7)
Beginning at a point where the center line of said railroad track intersects the dividing line between lands of Rose Williams, et al, and the lands of Pinky Mayo.

Thence along the center line of said railroad track S 63° 15' W to a point in the dividing line between lands of Rose Williams, et al, and the lands of Arthur J. Vatter, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track.

The above described right-of-way being located in the SE 1/4 of SW 1/4 of Section 33, containing an area of 1.52 acres, more or less.

- e. (Referred to for identification purposes as Tract No. 8)
Beginning at a point where the center line of said railroad track intersects the dividing line between lands of Arthur J. Vatter and the lands of Rose Williams, et al.

Thence along the center line of said railroad track

S 63° 15' W to a point in the dividing line between lands of Arthur J. Vatter and lands of Leonise Lee, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track.

The above described right-of-way being located in the SE 1/4 of NW 1/4 and in the SW 1/4 of SW 1/4 of said Section 33, containing an area of 0.82 acres, more or less.

f. (Referred to for identification purposes as Tract No. 9)

Beginning at a point where the center line of said railroad track intersects the dividing line between lands of Leonise Lee and lands of Arthur J. Vatter.

Thence along the center line of said railroad track S 63° 15' W to a point in the dividing line between lands of Leonise Lee and the lands of Jim Lee, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track.

The above described right-of-way being located in the SE 1/4 of SW 1/4 and in the SW 1/4 of SW 1/4 of said Section 33 containing an area of 0.99 acres, more or less.

g. (Referred to for identification purposes as Tract No. 10)

Beginning at a point where the center line of said railroad track intersects the dividing line between lands of Jim Lee and lands of Leonise Lee.

Thence along the center line of said railroad track S 63° 15' W to a point in the dividing line between the lands of Jim Lee and the lands of George W. Law, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track.

The above described right-of-way being located in the SW 1/4 of SW 1/4 of said Section 33, containing an area of 0.61 acres, more or less.

h. (Referred to for identification purposes as Tract No. 11)

Beginning at a point where the center line of said railroad track intersects the dividing line between lands of George W. Law and lands of Jim Lee. Thence along the center line of said railroad track S 63° 15' W to a point where the said center line of said railroad track intersects the dividing line between Sections 32 and 33, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track subject to such rights as are held by others in the public road known as the "Forish Road". The above described right-of-way being located in the extreme southwest corner of the SW 1/4 of SW 1/4 of said Section 33, containing an area of 1.59 acres, more or less.

i. (Referred to for identification purposes as Tract No. 12)

Beginning at a point where the center line of said railroad track intersects the dividing line between Sections 32 and 33.

Thence in a northerly direction to a point distant 50 feet northwest of the center line of said railroad track as measured at right angles thereto.

Thence S 63° 15' E along a line parallel to the center line of said railroad track and distant therefrom 50 feet to a point in the dividing line between said Section 32 and Section 5 of Township 10 South, Range 9 West.

Thence in an easterly direction along the dividing line of said Sections 32 and 5 to a point common to Sections 32 and 33 of Township 9 South, Range 9 West, and Sections 4 and 5 of Township 10 South, Range 9 West. Thence in a northerly direction along the dividing line between said Sections 32 and 33 to the point of beginning, subject to such rights as are held by others in the public road known as the "Parish Road". The above described right-of-way being a triangular shaped parcel of land lying in the extreme Southeast corner of said Section 32, containing an area of 0.10 acres, more or less.

All of the above described easements, from "a" through "i", inclusive, were acquired by the United States of America by a Declaration of Taking dated September 25, 1945, in the suit entitled, "UNITED STATES OF AMERICA vs Nine Parcels of Land, KT AL", being No. 855 of the Civil Docket of the United States Court for the Eastern District of Louisiana, recorded in Conveyance Book 331, Page 149, and being confirmed in a judgment in the same style and numbered case rendered 21 February 1946.

3. A right-of-way one hundred (100) feet in width, being 50 feet on each side of the following described center lines for the following purposes:

- (i) For the construction, operation, renewing, alteration, inspection and maintenance of a railroad track or tracks, together with all sidings, switch tracks, constructions, buildings and/or appurtenances connected with or incidental to the construction, operation and maintenance of a railroad and railroad track or tracks.
- (ii) For the construction, operation, renewing, alteration, inspection and maintenance of electrical transmission and power lines and/or telephone and telegraph lines, together with the right to place, erect and maintain, inspect, add to the number of and relocate at will poles, towers, cross-arms and fixtures, and string wires and cables adding thereto from time to time, and to cut and remove from the below described property, and the property adjoining the same for a distance of forty (40) feet south, any trees, overhanging branches, or other obstructions.

(iii) For the purpose of laying, operating, renewing, altering, inspecting and maintaining pipe lines for the transmission of oil, gas, petroleum, and other products.

- a. (Referred to for identification purposes as Tract No. 15)
Over and across the South Half of the NW 1/4 of Section 5, T 10 S, R 9 W, Southwestern District of Louisiana, and more fully described as: Beginning at a point on the North line of said tract approximately 105 feet west of its northeast corner; thence S 63° 15' W, 1908 feet more or less, to Station 105 plus 60.9, at the point of curve of a 30 curve to the left.

Thence following S° curve to the left to the South Boundary of the S 1/2 of the NW 1/4 of said Section 5, and containing 5.4 acres, more or less.

Being the same right-of-way acquired by Defense Plant Corporation from Sisters of Charity of the Incarnate Word, by deed dated January 31, 1944, bearing file number 306913 and recorded in Book 368, page 177 of the records of Calcasieu Parish.

- b. (Referred to for identification purposes as Tract No. 18)
Over and across the Northwest corner of the N 1/2 of the NW 1/4 of Section 5, T 10 S, R 9 W, Southwestern District of Louisiana; said right-of-way being 100 feet wide, 50 feet on each side of the center line of said track, as now located, and containing .8 of an acre, more or less.

Being the same right-of-way acquired by Defense Plant Corporation from Ernest R. Miller, Edgar Miller, Hannah L. Monday, Hilma E. Wachsen, Elaine Wachsenstein, Irma L. Tieman, Selma W. Flu by deed dated May 8, 1944, filed for record May 16, 1944, in Conveyance Book 371, page 219 of the records of Calcasieu Parish.

- The right-of-way hereby conveyed over and across this Parcel "b" does not include a right-of-way for the purpose of laying, operating, renewing, altering, inspecting and maintaining pipe lines for the transmission of oil, gas, petroleum, and other products.

- c. (Referred to for identification purposes as Tracts Nos. 17, 18, and 19) Over and across the NE 1/4 of SE 1/4 of Section 5, T 10 S, R 9 W, being 100 feet wide, 50 feet on each side of the center line of said track, as now located, and containing 2.7 acres, more or less.

Being the same right-of-way acquired by Defense Plant Corporation from John P. Arene, Mrs. Vicelio Olsen, and Mrs. Margaret Rohrer by deed dated August 25, 1944, bearing file number 314622 and recorded in Book 376, page 62 of the records of Calcasieu Parish.

- d. (Referred to for identification purposes as Tract No. 20)
Over and across the Southeast Quarter of the Southeast Quarter (SE 1/4 of SE 1/4), Section 5, T 10 S, R 9 W, Southwestern District of Louisiana, being 100 feet wide, 50 feet on each side of the center line of said track, as now located, and containing approximately 3.5 acres.

Being the same right-of-way acquired by Defense Plant Corporation from the following named grantors by deeds dated, as follows bearing the following numbers and recorded in the following books and records of Calcasieu Parish, Louisiana:

<u>NAMES</u>	<u>DATE</u>	<u>FILE NO.</u>	<u>RECORDED</u>
Annabelle Kearney	March 28, 1944	308846	Conveyance Book 370, page 154
Easter Irene Kearney Livingston	April 1, 1944	308847	Conveyance Book 370, page 155
Charles J. Wright	Nov. 4, 1944	318178	Conveyance Book 379, page 252
Bryan H. Wright	Nov. 25, 1944	318182	Conveyance Book 379, page 269
Carroll V. Wright	June 1, 1944	318180	Conveyance Book 378, page 336
Helen Wright Robertson	Nov. 14, 1944	318177	Conveyance Book 379, page 251
Florence Wright McClure	Nov. 4, 1944	318179	Conveyance Book 379, page 253
Maria Ann Kearney	March 28, 1944	308850	Conveyance Book 370, page 159
Mrs. Lillia Kearney Nelson	March 28, 1944	308846	Conveyance Book 370, page 157
Simon Bolivar Kearney	March 25, 1944	308845	Conveyance Book 370, page 163
Nadel K. Kearney, Guardian of the minors, George P. Kearney, Jr., Ruth E. Kearney, and Jane Patricia Kearney	Dec. 13, 1944	318181	Conveyance Book 378, page 337
Ruth Agnes K. Buseley	March 28, 1944	308849	Conveyance Book 370, page 158

e. (Referred to for identification purposes as Tract No. 21)
Over and across the W 1/2 of the NE 1/4 of Section 7,
T 10 S, R 9 W, Southwestern District of Louisiana, being
100 feet wide, 50 feet on each side of the center line
of said track, as now located, and containing 2.5 acres,
more or less.

Being the same right-of-way acquired by Defense Plant
Corporation from Mrs. Ona Ecker; Mrs. Marie Louise
Fleig; Mrs. Augusta Kiplinger; Mrs. Tabitha Brooks;
S. S. Ecker; and Mrs. Margaret Trahan, by deed dated
February 7, 1944, bearing file number 306065 and
recorded in Book 364, page 504 of the records of
Calcasieu Parish.

f. (Referred to for identification purposes as Tract No. 22)
Over and across the Southwest Quarter of Northeast
Quarter (SW 1/4 of NE 1/4) of Section 7, T 10 S, R 9 W,
Southwestern District of Louisiana being 100 feet wide,
50 feet on each side of the center line of said track,
as now located, and containing approximately 2.5 acres.

Being the same right-of-way acquired by Defense Plant
Corporation from the following named grantors by deed
dated, bearing the following numbers and recorded in
the following books and records of Calcasieu Parish,
Louisiana:

<u>NAMES</u>	<u>DATE</u>	<u>FILE NO.</u>	<u>RECORDED</u>
Mrs. W. C. Bauffman and Mr. W. C. Bauffman, Jr.	Aug. 31, 1946	328445	Conveyance Book 389, Page 479
Mrs. Vera Perkins	Dec. 28, 1944	323559	Conveyance Book 384, Page 278
American National Bank of Beaumont, Texas	Dec. 15, 1944	323550	Conveyance Book 384, Page 277
Mrs. Anna F. Bordage)	Dec. 16, 1944	323557	Conveyance Book 384, Page 275
Mrs. Katharine B. Matthews) & Mr. J. Adriance Bordage)	Dec. 14, 1944	323556	Conveyance Book 384, Page 274

<u>NAME</u>	<u>DATE</u>	<u>FILE NO.</u>	<u>RECORDED</u>
Erwin J. LeBlanc	Dec. 15, 1944	323555	Conveyance Book 384, Page 273
Beryl W. Bordages	Dec. 15, 1944	323554	Conveyance Book 384, Page 272
Ethel Rignauden	Dec. 15, 1944	323553	Conveyance Book 382, Page 587
J. E. Broussard	Dec. 15, 1944	323552	Conveyance Book 382, Page 586
Mrs. Rosalie Irene Smith and Fred T. Smith	Feb. 28, 1945	323549	Conveyance Book 382, Page 584
Charles G. Hooks and Charles G. Hooks, Jr.	May 6, 1944	323551	Conveyance Book 382, Page 585
W. L. Green	March 29, 1945	323550	Conveyance Book 383, Page 436

g. (Referred to for identification purposes as Tract No. 23)
Over and across the Northwest portion of the SE 1/4 of the SE 1/4 of Section 7, T 10 S, R 9 W, Southwestern District of Louisiana, being 100 feet wide, 50 feet on each side of the center line of said track, as now located, and containing approximately one (1) acre.

Being the same right-of-way acquired by Defense Plant Corporation from Eliza Guio (Guillotte) by deed dated February 9, 1944, bearing file number 306202 and recorded in Book 363, page 260 of the records of Calcasieu Parish.

h. (Referred to for identification purposes as Tract No. 24)
A right-of-way over and across the NE 1/4 of SW 1/4 of Section 7, T 10 S, R 9 W, Southwestern District of Louisiana. Being 100 feet wide, 50 feet on each side of the center line of said track, as now located, and containing two and five-tenths (2.5) acres, more or less.

Being the same right-of-way acquired by Defense Plant Corporation from Fovell Lumber Company by deed dated February 3, 1944, bearing file number 305934 and recorded in Book 364, page 435 of the records of Calcasieu Parish.

4. A perpetual easement for the construction, use, operation, maintenance, repair and removal of a railroad track or tracks, a pipeline or pipelines, and electric power, telephone and telegraph lines, poles, towers, and guys, 100 feet in width over and across the following parcel of land, 50 feet on each side of a center line, said easement being more particularly described as follows:

a. (Referred to for identification purposes as Tract No. 25)
Beginning at a point 691.4 Feet West of the southeast corner of the SE 1/4 of the SW 1/4 of Section 7, T 10 S, R 9 W, Southwest Louisiana, thence North 16° 16' East 1370 feet, more or less, to the north line of said SE 1/4 of the SW 1/4 of Section 7, T 10 S, R 9 W.

Together with the perpetual right to clear and keep clear a strip of land 50 feet in width on the South and East side of said parcel.

The above described easement was acquired by the United States of America by a Declaration of Taking dated July 5, 1943, in the suit entitled

"UNITED STATES OF AMERICA vs Two Parcels of Land, Et Al", No. 858 of the Civil Docket of the United States Court for the Western District of Louisiana recorded in Conveyance Book 358 at page 105 and confirmed in a judgment in the same style and numbered case rendered May 12, 1944.

It is understood and agreed by and between the parties hereto that this conveyance transfers and assigns to the Purchaser any and all transferable rights, franchises, licenses and permits which the Vendor may have obtained and now holds from any governmental agencies or sub-divisions for the construction, maintenance, and operation of the railroad hereby conveyed over and across the rights of way hereinabove described and any and all navigable streams, public roads and highways traversing same.

The above described property, rights-of-way, servitudes, and easements are conveyed to the Purchaser subject to any and all reservations and exceptions which may appear from the Public records of Calcasieu Parish, State of Louisiana, including but not limited to the following (all references to "Stations" hereinafter are based on the plat, hereinbefore referred to, prepared by F. Shutte's Sons, dated June 7, 1943, and revised March 22, 1946, and April 22, 1946):

1. The reservations for oil and gas leases and other easements and rights-of-way, as set out in the deeds from Cities Service Refining Corporation to Lafosse Plant Corporation, dated August 25, 1944, and recorded in Book 375, Page 292 and in Book 478, page 45 of the records of Calcasieu Parish.
2. A North and South public road 60 feet wide whose center line crosses the center line of the railway at Station 4 plus 43.
3. An East and West public road 60 feet wide whose center line crosses the center line of the railway at Station 55 plus 08.
4. A North and South public road 60 feet wide whose center line crosses the railway at Station 84 plus 45.
5. A 200 foot North and South Federal Access Highway whose center line crosses the railroad at Station 170 plus 95.4.
6. A 100 foot East and West State Highway whose center line crosses the railroad at Station 265 plus 32.

Vendor expressly reserves for itself, its successors, and assigns, the right to use jointly with the Purchaser the rights of way and easements herein described under Subdivision II of the description of the property conveyed hereunder for the purpose of using, operating, maintaining, repairing, relocating, and removing any and all existing facilities (other than those conveyed under Subdivision I of the description of the property conveyed herein)

which may be located in, on, or under the land covered by such right-of-way and easement, including specifically, but not limited to the following:

1. A 10" North and South gas line which crosses the center line of the railway at Station 3 plus 81, known as Defense Plant Corporation line.
2. A North and South 6" oil line which crosses the center of the railway at Station 4 plus 13, known as the Magnolia Petroleum Company line.
3. A 6" pipe line which crosses the center line of the railroad in a Northeast-Southwest direction at Station 84 plus 25.6, known as the Union Sulphur Company line.
4. A 20" gas line which crosses the center line of the railroad in a Northeast Southwest direction at Station 85 plus 85, known as the Defense Plant Corporation line.
5. A 20" gas line which crosses the center line of the railroad in a Northeast Southwest direction at Station 201 plus 58.8, known as the Defense Plant Corporation line.
6. An 8" oil line which crosses the center line of the railroad in an East and West direction at Station 201 plus 36 and is known as the Magnolia Petroleum Company line.
7. A 12" brine line which crosses the center line of the railroad in a Northeast Southwest direction at Station 214 plus 23, known as the Mathieson Alkali Works line.
8. Various and sundry inter-plant pipe connections between the Butadiene Plant, and the Firestone Tire and Rubber Company Plant which crosses the railroad between Station 229 plus 00 and 285 plus 32.
9. A right-of-way for telephone lines which enter said railway right-of-way at Station 4 plus 60 and continues on said right-of-way to the end of the railroad at Station 285 plus 52. The said telephone line centers from 44 to 46 feet to the West or Right of railway center line and is operated by Southern Bell Telephone and Telegraph Company.
10. A transmission line right-of-way along the left Southeast side of the railway; said power line being located with the center transmission poles from forty (40) to fifty (50) feet to the left of railroad center line; said transmission line enters said railway right-of-way at Station 83 plus 81 and continues on said right-of-way to Station 285 plus 32 at the end of said railway line. This transmission line right-of-way is for Defense Plant Corporation power line between Cities Service Refining Company and the Defense Plant Corporation Magnesium Plant.

It is understood and agreed by and between the parties hereto that the rights herein reserved by Vendor shall be exercised in such manner as not to damage the property or materially interfere with the Purchaser's use of rights-of-way and easements hereby conveyed.

TO HAVE AND TO HOLD: The said property unto the said Purchaser and the Purchaser's successors and assigns forever.

This sale is made and accepted for the consideration and upon the terms and conditions as follows:

1. The price and sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars cash which the Purchaser has well and truly paid to the Vendor who acknowledges receipt thereof and grants full acquittance and discharge therefor.
2. Purchaser certifies as a condition of this sale that it is not purchasing the property herein conveyed for the purpose of reselling or leasing it and in no case will Purchaser resell or lease said property within three years from the date hereof without first obtaining the written authorization of the War Assets Administrator.
3. The Purchaser certifies that it has begun common carrier operation of said trackage and has established said trackage within the switching limits of a new station named West Lake Charles; has established line haul rates from this new station which are the same as the line haul rates to and from Lake Charles, Louisiana, after filling of tariffs, and notices in the customary manner after obtaining the required approvals and authorization from the governmental agencies concerned and the concurrence of other participating railroads.
4. That Purchaser agrees that it has obtained all of the necessary permits and authorizations for the running of said railroad.
5. The Purchaser will assume its proportionate share of the taxes from the date of this transfer.
6. The parties hereto expressly dispense with the production of the usual and customary mortgage certificates.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed in sextuple this 21st day of May 1947, in the presence of the undersigned competent witnesses.

UNITED STATES OF AMERICA AND

RECONSTRUCTION FINANCE CORPORATION
Acting by and through
War Assets Administrator
By Conner Block
Deputy Regional Director

WITNESSES:

John D. Smith
C. Mandy Holcomb

TEXAS AND NEW ORLEANS RAILROAD COMPANY
By R. L. Barnes
Vice-President

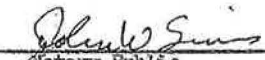
THE KANSAS CITY SOUTHERN RAILWAY COMPANY
By Walter F. Smith
Executive General Agent

STATE OF LOUISIANA

PARISH OF ORLEANS

On this 21st day of May 1947, before me, a Notary Public in and for the said State and Parish, personally appeared Cannon D. Clark, who being duly sworn acknowledges that he is the Deputy Regional Director, Office of Real Property Disposal, War Assets Administration, and that pursuant to a Delegation of Authority of the War Assets Administrator executed on November 22, 1946, and the provisions of the Surplus Property Act of 1944, as amended, he has been duly designated, authorized, and empowered by the War Assets Administrator to execute the within instrument on behalf of said Administrator; he further acknowledges that he executed the said instrument in behalf of and as and for the voluntary act and deed of said Administrator, acting in behalf of the United States of America and the Reconstruction Finance Corporation; and that he executed the same in the capacity therein stated and for the purposes and considerations therein expressed.

Given under my hand and seal this 21st day of May 1947.

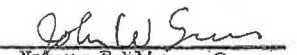

Notary Public
John W. Gums

STATE OF LOUISIANA

PARISH OF ORLEANS

Before me, the undersigned Notary Public in and for the said State and Parish, personally came and appeared R. W. Barnes who declared and acknowledged that he signed, executed, and delivered the foregoing instrument for and on behalf of the TEXAS AND NEW ORLEANS RAILROAD COMPANY, a Texas corporation, in his capacity as Vice President of said corporation, being duly authorized, as the free act and deed of said corporation.

Given under my hand and seal this 21st day of May 1947.


Notary Public
John W. Gums

STATE OF LOUISIANA

PARISH OF ORLEANS

Before me, the undersigned Notary Public in and for the said State and Parish, personally came and appeared W. D. Burch, who declared and acknowledged that he signed, executed, and delivered the foregoing instrument for and on behalf of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri Corporation, in his capacity as General Agent of said corporation, being duly authorized, as the free act and deed of said corporation.

Given under my hand and seal this 21st day of May 1947.

C. W. Sims
Notary Public
Notary Public

United States documentary stamps in the sum of \$275.00, duly defaced and cancelled, are affixed to the original counterpart hereof filed for record in the Office of the Clerk of Court and Ex-Officio Register of Conveyances for the Parish of Calcasieu, Louisiana.

CERTIFICATE OF ~~ASSISTANT~~ SECRETARY
REAL PROPERTY REVIEW BOARD
WAR ASSETS ADMINISTRATION

I, the undersigned J. C. Ford,
~~Assistant~~ Secretary, Real Property Review Board, War Assets
Administration, in my official capacity as such ~~Assistant~~
Secretary, and duly authorized in the DELEGATION OF AUTHORITY INCIDENT
TO THE CARE, HANDLING AND CONVEYANCING dated November 22, 1946, to
make the following certification, do hereby certify:

1. That Cannon D. Clark is the
~~Deputy Regional Director, Office Real Property~~ War Assets Administration,
~~New Orleans, Louisiana~~, duly appointed,
authorized and acting in such capacity at the time of the execution of
the attached instrument.

2. That the attached DELEGATION OF AUTHORITY INCIDENT TO THE
CARE, HANDLING AND CONVEYANCING is a true and correct copy of the
original of said DELEGATION OF AUTHORITY, dated November 22, 1946.

Given under my hand this 31st day of May, 1947.



Secretary
Real Property Review Board
War Assets Administration

cc

WAR ASSETS ADMINISTRATION

(NOTICE)

DELEGATION OF AUTHORITY NO.

DELEGATION OF AUTHORITY INCIDENT TO THE CARE, HANDLING, AND CONVEYANCING

The Deputy Administrator, Office of Real Property Disposal, each Assistant Deputy Administrator, Office of Real Property Disposal, War Assets Administration, the Zone Administrator and Zone Director, Office of Real Property Disposal, in each and every War Assets Administration Zone Office, and the Regional Director and Deputy Regional Director for Real Property Disposal, in each and every War Assets Administration Regional Office, excepting the Fort Worth Regional Office, are hereby authorized, individually (1) to execute, acknowledge and deliver any deed, lease, permit, contract, receipt, bill of sale, or other instruments in writing in connection with the care, handling and disposal of surplus real property, or personal property assigned for disposition with real property, located within the United States, its territories and possessions, (2) to accept any notes, bonds, mortgages, deeds of trust or other security instruments taken as consideration in whole or in part for the disposition of such surplus real or personal property, and to do all acts necessary or proper to release and discharge any such instrument or any lien created by such instrument or otherwise created, and (3) to do or perform any other act necessary to effect the transfer of title to any such surplus real or personal property located as above provided; all pursuant to the provisions of the Surplus Property Act of 1944, 58 Stat. 765 (50 U.S.C. App. Supp. 1611), as amended by Public Law 181, 79th Congress; Executive Order 9689 (11 F.R. 1265); Surplus Property Administration Regulation No. 1, as amended (10 F.R. 14064; 11 F.R. 2802; 11 F.R. 3035); and Surplus Property Administration General Amendment of January 5, 1946 (11 F.R. 408).

R. G. Rhett, the Secretary, and J. G. Ford, the Assistant Secretary, of the Real Property Review Board, War Assets Administration, are hereby authorized, individually, to certify true copies of this Delegation and provide such further certification as may be necessary to effectuate the intent of this Delegation in form for recording in any jurisdiction, as may be required.

This Delegation shall be effective as of the opening of business on November 23, 1946.

This authority confirms such authorities previously granted under dates of May 17, 1946; May 29, 1946; July 30, 1946; September 16, 1946 and October 31, 1946, as do not conflict with the provisions of this delegation.

November 22, 1946


ROBERT M. LITTLEJOHN
Administrator

47-3380

RESOLUTION ADOPTED AT REGULAR MEETING OF THE
BOARD OF DIRECTORS OF TEXAS AND NEW ORLEANS
RAILROAD COMPANY, HELD AT HOUSTON, TEXAS ON
MAY 12, 1947.

- - - - -

On motion duly made and seconded, the following resolution was unanimously adopted:

WHEREAS, the Chairman has advised of completion of all details in connection with the contemplated purchase by this Company, jointly with The Kansas City Southern Railway Company, from United States of America and Reconstruction Finance Corporation, of the spur line of track, together with certain interchange and storage tracks, including turnout connections, all of said trackage aggregating a total length of approximately 6.42 miles, together with rights-of-way, franchises, licenses and permits in connection therewith, located in Calcasieu Parish, Louisiana, more particularly described as follows:

Main industrial lead track extending approximately 4.83 miles in a general southerly and southwesterly direction beginning at a point of connection with Kansas City Southern Railway Magnesium Plant track at engineer station 0+100, said point being near northeast corner of southeast quarter of Section 33, Township 9 South, Range 9 West in Calcasieu Parish, Louisiana, except that first 200 feet of track owned by K.C.S. Railway is not included, and ending at engineer station 254+85 at north line of Public Highway located along south line of Section 18, Township 10 South, Range 9 West in Calcasieu Parish, Louisiana; two storage tracks, 2,996.5 feet and 2,627.8 feet in length, located near point of beginning of main lead at place commonly known as "Rosebluff Yard"; one storage track, 1,874.4 feet in length, near end of main lead; turnout connections for three tracks, approximating a total of 727 feet of track, diverging from said main lead track and for two tracks, approximating a total of 407 feet of track, diverging from storage track, all situated within said Section 18, and lying within main lead right-of-way of normal width of 50 feet each side of center line of main lead track; drainage structures under trackage and roads, consisting of various diameter concrete pipes, box culverts, timber trestling and steel girder span; highway crossing signs, private road crossing and public road crossing improvements; and other improvements of any nature pertaining to construction or operation of all trackage described; total mileage of trackage described herein above amounting to 4.788 of main lead track and 1.635 miles of other track, it being understood that turnout connection to so-called Maplewood industry spur is not included in trackage involved. All "Stations" herein referred to are delineated on a plat of survey prepared by F. Shotts' Sons, dated June 7, 1943, revised March 22, 1946, and April 22, 1946.

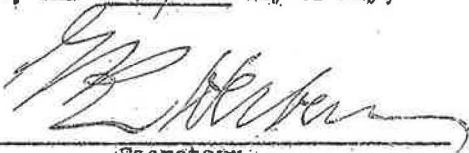
NOW, THEREFORE, BE IT RESOLVED, That this Company complete the purchase of said property for the price and sum of Two Hundred Fifty Thousand and no/100 (\$250,000.00) Dollars cash, to be paid jointly by it and The Kansas City Southern Railway Company, in the proportions of one-half each.

BE IT FURTHER RESOLVED, That E. A. Craft, Executive Vice-President, and R. W. Barnes, Vice President, be and each of them is hereby authorized and empowered to execute, on behalf of this Company, the necessary deed containing such stipulations, terms and conditions as in his discretion he may deem fit and proper, to execute any and all other instruments, and to do any and all other things whatsoever which he may consider necessary to carry out the purposes of this resolution.

- - - - -

I, G. B. Herbert, hereby certify that I am Secretary of the Texas and New Orleans Railroad Company; that a regular meeting of the Board of Directors of said Company was held at Houston, Texas on May 12th, 1947; that said meeting was duly called and held pursuant to all legal requirements, and that a sufficient number of Directors were present to constitute a quorum; that said meeting was duly held in all respects, as provided for under the By-Laws of the Company, and that the foregoing is a true and complete copy of the resolution unanimously adopted at said meeting.

Dated at Houston, Texas, this 14th day of May, 1947.


Secretary
Texas and New Orleans Railroad Company

RESOLUTION ADOPTED AT THE REGULAR ANNUAL MEETING
OF THE BOARD OF DIRECTORS OF THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, HELD AT KANSAS CITY,
MISSOURI, ON MAY 27, 1947.

On motion duly made and seconded, the following
resolution was unanimously adopted:

WHEREAS, the Chairman has advised of the comple-
tion of the purchase by this Company, jointly with Texas &
New Orleans Railroad Company, from the United States of
America and Reconstruction Finance Corporation, of the spur
line of track, together with certain interchange and storage
tracks, including turnout connections, all of said trackage
aggregating a total length of approximately 6.42 miles, to-
gether with rights of way, franchises, licenses and permits
in connection therewith, located in Calcasieu Parish,
Louisiana, more particularly described as follows:

Main industrial lead track extending approximately
4.83 miles in a general southerly and southwesterly
direction beginning at point of connection with
Kansas City Southern Railway Magnesium Plant track
at engineer station 0/00, said point being near
northeast corner of southeast quarter of Section 33,
Township 9 South, Range 9 West in Calcasieu Parish,
Louisiana, except that first 200 feet of track owned
by K.C.S. Railway is not included, and ending at
engineer station 254/85 at north line of Public High-
way located along south line of Section 18, Township
10 South, Range 9 West in Calcasieu Parish, Louisiana;
two storage tracks, 2,996.5 feet and 2,627.6 feet in
length, located near point of beginning of main lead
at place commonly known as "Rosebluff Yard"; one
storage track, 1,874.4 feet in length, near end of
main lead; turnout connections for three tracks,
approximating a total of 727 feet of track, diverging
from said main lead track and for two tracks,
approximating a total of 407 feet of track, diverging
from storage track, all situated within said Section
18, and lying within main lead right of way of normal
width of 50 feet each side of center line of main
lead track; drainage structures under trackage and
roads, consisting of various diameter concrete pipes,
box culverts, timber trestling and steel girder span;
highway crossing signs, private road crossing and
public road crossing improvements; and other improve-
ments of any nature pertaining to construction or

operation of all trackage described; total mileage of trackage described hereinabove amounting to 4.788 of main lead track and 1.635 miles of other track, it being understood that turnout connection to so-called Maplewood industry spur is not included in trackage involved. All "Stations" herein referred to are delineated on a plat of survey prepared by F. Shotts' Sons, dated June 7, 1943, revised March 22, 1946, and April 22, 1946.

NOW, THEREFORE, BE IT RESOLVED, That this Company does hereby ratify and confirm the purchase of said property which was made for the price and sum of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars cash, paid jointly by it and Texas & New Orleans Railroad Company, in the proportions of one half each.

BE IT FURTHER RESOLVED, That the authority and power of W. D. Burch, General Agent, in executing this deed on behalf of this Company, and in executing any and all other instruments, and doing all other things whatsoever as in his discretion he considered necessary to the completion of this transaction, is hereby recognized, and his actions in this respect are ratified and confirmed.

I, G. H. BAGON, hereby certify that I am Assistant Secretary of The Kansas City Southern Railway Company; that the regular annual meeting of the Board of Directors of said Company was held at Kansas City, Missouri, on May 27, 1947; that said meeting was duly called and held pursuant to all legal requirements, and that a sufficient number of Directors were present to constitute a quorum; that said meeting was duly held in all respects, as provided for under the By-Laws of the Company, and that the foregoing is a true and complete copy of the resolution unanimously adopted at said meeting.

Dated at Kansas City, Missouri, this 27th day of May, 1947.


Assistant Secretary
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
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED STATEMENT OF DAVID O'NEAL,
DIVISION SUPERINTENDENT, OPERATIONS, SOUTH DIVISION
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

EXHIBIT B

**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**

**VERIFIED STATEMENT OF
RICHARD T. BARTOSKEWITZ, ASSISTANT VICE PRESIDENT,
SOUTHWEST DIVISION,
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

My name is Richard T. Bartoskewitz. I am Assistant Vice President for The Kansas City Southern Railway Company (KCS). I am responsible for operations on KCS' Southwest Division, which extends from Shreveport to Lake Charles, LA (including West Lake Charles and the Rosebluff Industrial Lead), and beyond to include Beaumont, Port Arthur, Houston, Corpus Christi, and Laredo, TX. My office is located at 1610 Woodstead Court, Suite 470, The Woodlands, TX 77380.

I am providing this statement to address the inadequacies and inaccuracies of the operating plan put forth by BNSF Railway Company (BNSF) in its December 31, 2014 filing in the above-captioned application. Based on my review of BNSF's operating testimony and my knowledge of operations on the Rosebluff Industrial Lead, I conclude that BNSF's proposed operation would substantially interfere with KCS' service to customers on the Rosebluff Lead, both those customers that KCS serves directly and those customers for which UP provides switching service to or from KCS. I believe that BNSF's proposal would likewise necessarily interfere substantially with UP's service on the Rosebluff Lead.

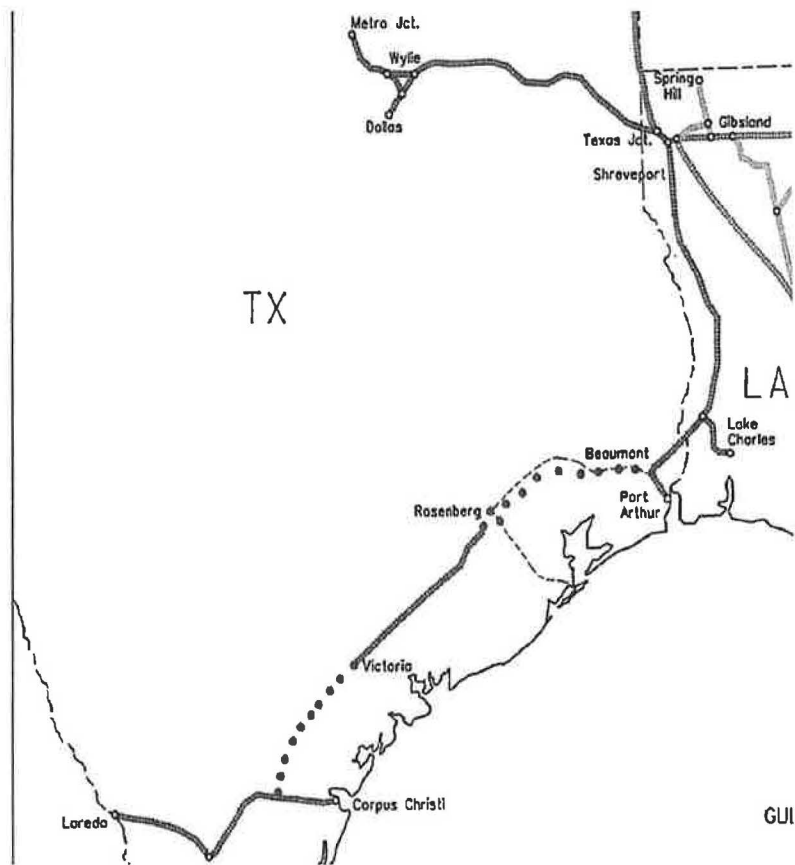
EXPERIENCE AND EDUCATIONAL BACKGROUND

I have worked in various operations management roles in the railroad industry for 17 years, including 15 years with BNSF Railway and two years with KCS. From 1997 through 2012, I held various positions with BNSF Railway, beginning as an analyst in line capacity studies and operations analysis in 1997. I was subsequently appointed manager of interline management in 1999. From 2002 through 2012 I progressed through leadership positions of increasing responsibility in field operations including terminal trainmaster in Houston, TX; division trainmaster in Silsbee/Beaumont, TX; terminal superintendent in Temple, TX; general director of transportation in Seattle, WA; and division general manager in Billings, MT. Much of my work for BNSF was in the Texas/Gulf Coast region.

In 2013, I joined KCS as Director of Field Transportation for KCS' Southwest Division based in The Woodlands, TX, and was subsequently promoted in early 2014 to my current position of Assistant Vice President, Southwest Division. I report directly to KCS' Vice President of Transportation and Safety, who reports to our Senior Vice President and Chief Transportation Officer.

RESPONSIBILITIES AS AVP, SOUTHWEST DIVISION FOR KCS

In my current assignment as Assistant Vice President of KCS' Southwest Division, I am accountable for leading and providing oversight for the daily operations of the division including safety, service to our customers, and financial performance. KCS's Southwest Division extends through western and southwest Louisiana, along the Texas Gulf Coast region, and south Texas, essentially all of KCS' lines and operations south of Shreveport, as shown in the map below.



The territory includes major terminals for KCS such as Lake Charles, Beaumont, Port Arthur, Kendleton, Corpus Christi, and Laredo, as well as KCS's operations via trackage rights and its own lines between Beaumont, Robstown / Corpus Christi, and Laredo, Texas.

BNSF 'OPERATING PLAN' IS BASED ON UNREALISTIC ASSUMPTIONS

BNSF's proposed operation is based upon assumptions regarding the availability of multiple clear operating windows or "operating slots" on the UP-BNSF main line, onto the Rosebluff Lead, through the Rosebluff Yard, and continuing on the Rosebluff Lead beyond the yard to CITGO's facility, all aligning in such a way so as to occur at more or less the same time, on a consistent and repeatable basis. Such windows or "slots" do not exist on the Rosebluff Lead nor in the Rosebluff Yard on a consistent and repeatable basis.

In preparing for this statement, I reviewed the Verified Statement of Rollin Bredenberg (Bredenberg V.S.), operating witness for BNSF. Mr. Bredenberg says BNSF's proposed service will "closely resemble" a proposal "which provided BNSF with a two-hour window ... during UP's 12-hour operating period." Such a "window," however, does not exist.

First, the "two-hour window" BNSF refers to - "between 5 a.m. and 7 a.m.", Bredenberg V.S., Exhibit F - is not "during UP's 12-hour operating period" but actually impedes upon and disrupts both UP's and KCS's operations. KCS' operating window in Rosebluff Yard begins at 6 p.m. and extends until 6 a.m. of the following day, halfway through the operating window BNSF seeks to claim for itself. BNSF misstates that its proposed operating "window" would be taken from UP, ignoring the fact that it would also carve time from KCS' defined 6 p.m. to 6 a.m. operating window, and thus implying that its proposed operation would have very little or perhaps no impact on KCS' operations. Any disruption of operations necessary to create such a window would necessarily disrupt the operations of both the KCS and UP in Rosebluff Yard.

Second, such a 5 a.m. to 7 a.m. "window" ordinarily does not exist in Rosebluff Yard; rather, KCS and UP operations would have to be disrupted to create such a window. Below are tables, prepared at my request, showing for two different periods - May 1 through June 15, 2014, and February 1 through February 17 of this year - when KCS' RLC304, our job that goes on duty just prior to midnight and is scheduled to depart the Rosebluff Lead by 6:00 a.m., actually departed the yard. While on the Rosebluff Lead, RLC304 switches in Rosebluff Yard and serves customers adjacent to Rosebluff Yard until departing Rosebluff with interchange destined to Mossville Yard. RLC304 left Rosebluff Yard at the following times on the listed dates:

May-June 2014	
Date	OUT
5/1/14	4:28
5/2/14	9:21
5/3/14	22:03
5/4/14	5:37
5/5/14	15:13
5/6/14	7:19
5/7/14	8:46
5/8/14	8:37
5/9/14	9:06
5/10/14	0:06
5/11/14	2:26
5/12/14	7:46
5/13/14	4:02
5/14/14	6:33
5/15/14	6:53
5/16/14	7:39
5/17/14	21:28
5/18/14	1:11
5/19/14	11:00
5/20/14	2:12
5/21/14	7:28
5/22/14	4:13
5/23/14	9:20
5/24/14	11:05
5/25/14	20:02
5/27/14	11:29
5/28/14	9:38
5/29/14	7:07
5/30/14	6:44
5/31/14	6:50
6/1/14	23:04
6/2/14	6:57
6/3/14	3:24
6/4/14	9:50
6/5/14	9:11
6/6/14	2:35
6/7/14	20:29
6/8/14	4:04
6/9/14	15:17
6/10/14	2:41
6/11/14	17:27

6/12/14	10:23
6/13/14	8:57
6/14/14	
6/15/14	

February 2015	
Date	OUT
2/1/15	
2/2/15	7:50
2/3/15	9:39
2/4/15	9:10
2/5/15	8:07
2/6/15	7:53
2/7/15	
2/8/15	
2/9/15	8:14
2/10/15	8:38
2/11/15	
2/12/15	8:04
2/13/15	
2/14/15	
2/15/15	20:53
2/16/15	10:00
2/17/15	8:17

As the tables above show, only on 19 days of the 44-day May-June 2014 measurement period, and on 6 days in the 17-day February 2015 measurement period, would our operation potentially have allowed a 5 a.m. to 7 a.m. "window" to be open. Thus, about 60-65% of the time, the "window" BNSF imagines for entering the Rosebluff Lead does not exist. In order to operate when that window does not exist, BNSF would have to interrupt KCS' operation in Rosebluff Yard, impacting our ability to serve customers and to conduct timely interchange with UP. That interruption would likely interfere with UP's Rosebluff Yard operations as well.

Furthermore, as is apparent from the tables above, the departure time of KCS' RLC304 job from Rosebluff Yard is irregular. Sometimes it is well within the target window for KCS to depart, and UP subsequently to occupy, the Rosebluff Yard. More often, however, it is not.

That is because the variables and constraints affecting KCS' and UP's operations on the Rosebluff Industrial Lead can and often do change considerably from day to day. Some of these variable and constraints are within KCS' influence or control, and as such they are actively managed to accomplish safe and timely service for our customers; however many are not within our immediate influence or control. Frequently, UP overstays its target time for occupying Rosebluff Yard, for reasons that may include but are not limited to: holding its train at Rosebluff Yard for an Amtrak train or other priority traffic to pass on the 50/50 Line, because the nearby Calcasieu River bridge is open to allow river vessel passage, because of an equipment or track problem, or often just because of the volume of cars being handled and processed exceeds the time allocated by plan for UP's operations in Rosebluff Yard. UP's late departure causes KCS to be late starting its next shift in the yard, and the problem of each carrier being outside of the planned operating windows in Rosebluff tends to perpetuate in a "vicious cycle" until either KCS and/or UP gain enough capacity and flexibility to catch up and reset the operations to a standard plan and schedule. Once the operation is off-plan, this restorative process frequently takes days to fully play out, and in the most extreme scenarios it can take weeks or even longer.

This essential flexibility would not be possible if UP and KCS had to adhere to rigid operating times in order to manufacture a window or operating slots for BNSF to provide a clear route to and from CITGO. That lack of flexibility would mean that KCS and UP would often have to leave work incomplete – just drop everything and get out of the way or “clear up” – to allow BNSF's trains to pass through. Even if that were possible – and sometimes it would not be possible – it would mean stopping service to shippers before the service was complete, and an increased probability of missed downstream connections that would degrade service to our customers and ultimately increase our customers' supply-chain costs.

Third, if BNSF's proposed operation would work as smoothly as it says, it would not need a "two-hour window" for entering the Rosebluff Lead. Mr. Bredenberg says that "The CITGO Direct Train will depart the Lacassine Yard and head west 20 miles along the 50/50 Line to the Rosebluff Industrial Lead...I expect that this operation would take 30 to 45 minutes *if BNSF had a clear route.*" Bredenberg V.S. at 7-8. Assuming very optimistically that it would take an additional 30 minutes to traverse the Rosebluff Lead to CITGO, that's a total 60 to 75 minute window needed to allow for the variability in BNSF's proposed transit from the Lacassine Yard to CITGO. Why then does BNSF seek a *two-hour* window?

BNSF seeks a two-hour window because it knows that it could not reliably reach the Rosebluff Lead and clear Rosebluff Yard in the 60 to 75 minute period it hypothesizes. Note that Mr. Bredenberg's time projections are both couched in terms of "*if BNSF had a clear route.*" BNSF does not show that it would have a clear route on the 50/50 Line (where it is one-half owner), a line which hosts up to 30 trains a day (including Amtrak) and which contains a swing bridge crossing of the Calcasieu River that must open multiple times per day whenever river vessels request passage. See Sullivan/Ireland verified statement. BNSF does not show that it would have a clear route in Rosebluff Yard either, as KCS and UP use all tracks in the yard for various switching and interchange operations. And BNSF does not show that it would have a clear route between Rosebluff Yard and CITGO, over which track UP has 24-hour around-the-clock operations.

In short, BNSF's projected plan of operations is clearly based on a wrong, or at best unproven, assumption that BNSF would have clear passage over 25 miles of main line and lead track, across a swing bridge which must open for river vessel traffic on an unpredictable and unplanned basis, and through a capacity-constrained industrial support yard that routinely

operates near or above its optimal operating inventory. Such an assumption, in my opinion, is not realistic. I believe that BNSF knows that it is not realistic or they would not have repeatedly said, "*if BNSF had a clear route.*" Indeed, I imagine that BNSF is hoping that the Board will approve its application so that BNSF can say to KCS and UP, 'The STB said that you have to create a clear route for BNSF.' Such an edict would, in my opinion, be disastrous to the already constrained and difficult operations through Rosebluff Yard and on the Rosebluff Lead.

BNSF's operating statement is also internally inconsistent, asserting that communication and coordination among railroads will allow the operation BNSF proposes to work smoothly while asserting that UP mishandles its own operation. Communication is not a magic wand, and coordination is time consuming and difficult. If communication and coordination were enough to fix the UP operating problems that BNSF complains of, those problems would already be fixed, since clearly UP is capable of communicating and coordinating with itself. Adding yet another set of people to talk to and another set of trains to consume the limited supply of track space and time is not going to make communication or coordination easier. While BNSF implies that more communications will somehow magically improve operations, if that were the case UP could already have improved the problems that BNSF complains about.

BNSF OPERATION ON THE ROSEBLUFF LEAD WOULD IMPAIR KCS SERVICE TO ITS CUSTOMERS

BNSF operations through Rosebluff Yard and on the Rosebluff Lead to provide direct service to CITGO (or any other customer) would add congestion and more operating problems to an already-congested service area. BNSF's evidence fails to establish that its proposed operation will not substantially impair KCS' and UP's abilities to serve customers in this crowded operating environment.

As I understand it, to prevail in its application, the applicable statute requires BNSF to show that its proposed operation will not "substantially impair[] the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business." BNSF's application, seeking direct access to perhaps a dozen or more shippers for thousands of carloads of traffic, covers barely two pages, containing no details and no firm commitment of any sort.

First, the statement offers no detail of the proposed operation. Instead, BNSF opts for a vague and cursory description in hopes that the STB will grant the application so that BNSF can then demand that UP and KCS get out of BNSF's way whenever it wants to serve a customer. I understand that this is much the way that BNSF acted in December 2012, when it demanded that KCS allow it to deliver a unit train of crude oil to CITGO, even though CITGO's facility did not have the capacity to receive the train.

Second, several portions of BNSF's description of its proposed operation are particularly troubling, namely:

- "... and to other customers in the terminal area." *Bredenberg V.S.* at 7. BNSF offers no description *at all* of service to any customer other than CITGO. Each customer's facility is different – BNSF's proposal to chamber a train inside the CITGO facility, even if feasible there, would not be possible with customers with more limited or different track layouts. BNSF offers no hypothetical transit time nor commodity description for service to other customers, some of whom receive or ship TIH materials. TIH shipments cannot dwell in a carrier's yard for more than 48 hours, meaning that if BNSF were to handle traffic for a shipper receiving TIH loads, it would have less flexibility to hold those loads to wait for KCS and UP to create an operating window.

- “will closely resemble” the operation outlined in UP’s December 18, 2012 e-mail. Bredenberg V.S. at 7. BNSF’s description “closely resemble” conspicuously avoids any sort of actual commitment to how it would conduct its proposed operation. To the extent that the brief description can be deciphered, it is only for trains moving point to point, without stopping and without switching, via a dedicated operating period when all other business gets out of that train’s way. Indeed, the operation described on page 7 does not track the description in the described UP e-mail, so exactly what BNSF proposes is unclear.

What’s missing from BNSF’s description is also a red flag – how much traffic BNSF proposes to handle. Again, BNSF provides no description at all of any planned service to any customer except to CITGO, yet it asks – or at least appears to ask – for access to all customers on the Rosebluff Lead in the same manner. BNSF wants UP and KCS to create a two-hour window, clearing at least 25 miles of track, for BNSF to enter the CITGO facility, and a similar window for BNSF to exit the facility. As shown above, those windows are imaginary – they do not exist today. How many windows per week is BNSF seeking to force UP and KCS to create just so BNSF can serve CITGO? And how many other such windows will BNSF seek to serve other unspecified shippers? Since BNSF describes only a direct train service – saying its “direct service to the CITGO facility *and to other customers in the terminal area*” will “closely resemble” the so-called “CITGO Direct Train” - BNSF has to contemplate a separate train for each shipper, to avoid occupying the Rosebluff Lead with switching cars and further interfering with service to shippers on the track. BNSF’s evidence offers nothing at all about how many such trains and how many operating windows KCS and UP would be required to disrupt their

operations to create. Without such information, it is impossible to fully quantify the extent of the interference BNSF's proposal would cause.

In essence, BNSF's service proposal is asking the STB to force UP and KCS to interrupt their already constrained operations on the Rosebluff Lead to make operating windows for BNSF. Not only does BNSF want two, two-hour operating windows to serve just one shipper - CITGO - but it also wants the STB to tell KCS and UP that they need to create two-hour windows for direct train service to any of the many other shippers that are on the Rosebluff Lead. Such an ability to demand direct access would severely interrupt KCS service. I would expect it would be at least equally disruptive to UP, which operates a larger segment of the Rosebluff Lead as well as operating in the Rosebluff Yard.

VERIFICATION

I, Richard T. Bartoskewitz, 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 22nd day of August 2015 at The Woodlands, Texas.


Richard T. Bartoskewitz
AVP, Southwest Division
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
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED STATEMENT OF DAVID O'NEAL,
DIVISION SUPERINTENDENT, OPERATIONS, SOUTH DIVISION
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

EXHIBIT C

**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**

**VERIFIED STATEMENT OF
JIMMY WAYNE SCOTT, SENIOR TRAINMASTER,
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

My name is Jimmy Wayne Scott. I am Senior Trainmaster for The Kansas City Southern Railway Company (KCS). My office is located at KCS' Mossville Yard, 3601 Old Spanish Trail, Westlake, LA.

The purpose of this statement is to address the substantial operational problems that the proposed operation of BNSF Railway Company (BNSF) on the Rosebluff Industrial Lead, as described in the Verified Statement of BNSF witness Rollin Bredenberg (Bredenberg V.S.) would cause KCS in serving its customers on the Rosebluff Lead and elsewhere.

EXPERIENCE

I have been involved with railroad operations for 22 years, all with KCS, mostly in the Lake Charles area. I hired on with KCS in 1992 as a conductor. I was promoted from conductor to engineer in October 1994. For about 12 of the next 16 years when I worked as an engineer, I was stationed in the Lake Charles area. For a very brief portion of that time, I even worked in Zone 2 of the KCS-UP joint facility, a zone which since 1998 has been switched exclusively by UP. Zone 2 is where CITGO, the target of BNSF's application, is located.

In 2010, I entered management as a road foreman of engines. My responsibilities in that position primarily involved overseeing rules compliance by train crews. My oversight activities included performing at least 10 check rides per month with train crews, downloading and reviewing event recorder data, checking train speeds with a radar gun, and being in charge of rules training classes.

In 2013, I became Terminal Trainmaster for Mossville and Rosebluff Yards. In that position, I continued to have some responsibilities for operating rules compliance, but also acquired responsibilities for interfacing with KCS' customers, understanding their service needs and working to make our service match those needs.

Beginning in 2014, I became a Senior Trainmaster. While I am in the field a good bit, my office is at KCS' Mossville Yard, KCS' main yard serving the Lake Charles area, where KCS crews serving Rosebluff Yard go on and off duty and where cars destined to or from Rosebluff Yard and the shipper facilities in that portion of Zone 1 are switched. My territorial responsibilities now stretch from the Lake Charles area to DeQuincy and all the way to Shreveport. I continue to interface with customers about their service needs and our performance to meet those needs, as well as having continued supervisory responsibilities for train operations. In total, there are 13 engineers and 28 conductor/brakemen (including extra boards) providing local service in the Lake Charles area under my supervision.

OVERVIEW OF OPERATIONS ON THE ROSEBLUFF LEAD¹

BNSF seeks access in this proceeding to operate trains on the Rosebluff Lead. The Rosebluff Lead consists of track jointly owned by KCS and UP, extending south from a jointly-owned UP-BNSF main line, serving a number of industries.

Under a 1981 agreement between KCS and SP (Exhibit 3 hereto), KCS is responsible for

¹ See maps of the Rosebluff Lead, attached as Exhibits 1 and 2.

serving customers located on the northern portion of the Rosebluff Lead (generally, the trackage pictured as the black lines on Exhibit 1). That segment, along with certain primarily KCS-owned track north of the UP-BNSF main line, comprises Zone 1 of the KCS-UP joint facility.

Meanwhile, UP serves Zone 2 of the joint facility (generally, the trackage pictured as the black lines on Exhibit 2) south of Bayou D'Inde, which is the dividing line between Zone 1 and Zone 2.

The agreement designates Rosebluff Yard as part of both Zones 1 and 2. Both UP and KCS having the right to use all tracks, and to store cars on certain tracks as agreed between them:

“Rose Bluff Yard shall be considered common to both zones, and all trackage therein may be used by either carrier...For operating efficiency, certain trackage in said yard shall, by agreement between the General Managers of the parties...be designated for the primary use of one party or the other, but [KCS] shall not use the designated [UP] tracks for storage purposes, nor shall [UP] use the designated [KCS] tracks for storage purposes.”²

Under the 1981 agreement, KCS and UP provide reciprocal switching for each other to customers in the zone that they serve. In addition, KCS and UP each have the right to deliver “trains of 25 cars or more loaded with the same commodity on one bill of lading on the same day” to an industry in the zone switched by the other carrier. Exhibit 3, page #5.

Every other year between 1981 and 1999, UP's predecessors and KCS swapped which zone they switched. See Exhibit 3, first page (UP letter). However, because of shippers' service concerns, KCS and UP agreed to suspend alternating which carrier served which zone, to provide more consistent customer service. Since that time, KCS has switched Zone 1 and UP has switched Zone 2.

² Cars are held by KCS in Rosebluff Yard for customers in Rosebluff (Axiall, PPG, Tetra, Certainteed and BW Services). Keeping these cars in proximity to the customers that need them allows KCS to provide better, more responsive service to customer needs.

Something that is important to note about operations on the entire Rosebluff Lead is that operations are required to be conducted pursuant to General Code of Operating Rules Rule 6.28.³ The maximum operating speed allowed on the Rosebluff Lead is 10 miles per hour. But GCOR Rule 6.28 requires that a crew be able to stop the train it is operating within one-half the distance that the crew can see. So, at night, when visibility is more limited, speeds are slower. When it is rainy or foggy (which happens often here next to Lake Charles and the Calcasieu River), speeds are slower. And the bigger and heavier the train, the slower it must be operated to meet the requirement of being able to stop within one-half the distance that the crew can see. It is not uncommon, therefore, for operations to be conducted at 2 or 3 miles per hour, particularly at night or in bad weather.

I understand that BNSF projects transiting an approximately 5 mile distance from the 50/50 Line to the CITGO plant, in 25 minutes – 12 miles per hour. That is a higher speed than normal for operating on the Rosebluff Lead and may not be achievable considering the left and right turns of the track coming off the 50/50 Line, the right turn to enter the CITGO facility, and issues affecting the application of Rule 6.28, such as dark, weather, and the weight of the trains BNSF proposes to operate.

KCS OPERATIONS ON THE ROSEBLUFF LEAD

KCS operates 2 jobs on the Rosebluff Lead, serving customers, performing switching, and delivering and retrieving cars being interchanged with UP. These jobs, though scheduled,

³ Rule 6.28 reads, in pertinent part, “Movement on Other than Main Track. Except When moving on a main track or on a track where a block signal system is in effect, trains or engines must move at a speed that allows them to stop within half the range of visions short of:

- Train.
- Engine.
- Railroad car.
- Men or equipment fouling the track
- Stop signal. Or
- Derail or switch lined improperly.

frequently must adjust what time they operate, due to a variety of circumstances and the busy, crowded operating environment that is Rosebluff Yard and Zone 2 on the Rosebluff Lead.

Rosebluff Yard is a six track yard extending in a southwesterly direction from a connection to the UP-BNSF 50/50 Line and the KCS crossover of that line. The tracks are numbered 1 through 6 starting on the east side of the yard (the side nearest to the Calcasieu River). Each of these tracks is approximately a mile long. In addition, there are storage tracks near the southwest end of the yard. A copy of KCS' Spot Location and Inventory Control (SLIC) book maps covering Rosebluff Yard is attached as Exhibit 4. A copy of those maps, arranged together with the SLIC book map showing the trackage in customer facilities adjacent to Track 1 in Rosebluff Yard, is attached as Exhibit 5.

Rosebluff Yard is designated by the 1981 operating agreement as the principal interchange between UP and KCS in the Lake Charles area, but to be used only for interchange of cars originating or terminating in Zone 1 or 2. KCS and UP have agreed to divide the operating time in Rosebluff Yard equally, consistent with their equal ownership of the facility and the 1981 switching agreement. KCS' planned operating period is from 1800 hours to 0600 hours (that is, overnight, 6 p.m. to 6 a.m.).

During its planned period of operations from 1800 hours to 0600 hours, KCS operates two jobs - the RLC210 and the RLC304. Ordinarily the trains operating in Rosebluff Yard have three-person crews, so that there can be a conductor/brakeman on the ground on each end of the train to throw switches and perform other functions necessary to facilitate moving cars and locomotives among the six Rosebluff Yard tracks and the adjoining customers and storage tracks. Commonly, the KCS crews will use most or all of the tracks in Rosebluff Yard during a shift in the course of dropping off and picking up interchange, switching cars and serving

customers accessed off the tracks on the eastern side of the yard.

RLC210 is a seven-day-per-week job. The crew of the RLC210 is scheduled to come on duty at Mossville Yard at 1700 hours, in anticipation of departing for Rosebluff Yard to start working there at 1800 hours. However, RLC210 must hold in Mossville Yard until the last UP job working the west end of Rosebluff Yard departs to Zone 2 to continue serving industries in Zone 2. Between Mossville Yard and Rosebluff Yard, KCS' line crosses public and private roadways, passes through a multi-gated customer facility, and crosses the UP-BNSF 50/50 Line, so RLC210 holds at Mossville until cleared into Rosebluff to avoid blocking any of those facilities or interfering with KCS' 2 jobs serving customers north of the UP-BNSF 50/50 Line.

The last UP job working the west end of Rosebluff Yard makes sure that Track 4 is clear so that there is a place for RLC210 to enter Rosebluff Yard and clear the UP-BNSF 50/50 Line. RLC210 will pull into Track 4 in Rosebluff Yard and switch the cars in Tracks 1, 2 and 3 as well as set out the UP Cars to Track 5 or 6. This job will also work Certainteed, which breaks off of Track 1, and BW Services which breaks off #3 Storage Track at the southwest end of the yard. RLC210 also sets PPG Cars and Axiall Cars in Track 1 for the RLC304 job upon completion of RLC210's tour of duty. On Saturdays, when RLC304 does not operate, RLC210 will also work the Axiall A and B plants and the PPG C plant.

Job RLC304 comes on duty at Mossville at 2359, to be taxied over to Rosebluff Yard and to use the same locomotives as RLC210 to switch additional customer facilities and to bring cars received in interchange from UP at Rosebluff Yard on the return move to Mossville Yard.

RLC304 will pull Axiall A plant cars and shove them into Track 4. They will then get cars out of Track 1 and work Axiall A Plant, Axiall B Plant, Tetra and the PPG C Plant. Once complete, they double their cars over from Track 1 to Track 4 and go to Mossville, leaving Tracks 1 and 4

clear.

While I am more familiar with KCS' operations in Rosebluff Yard than with UP's, I am acquainted with the parts of UP's activities that immediately precede or follow the operations of RLC210 and RLC304. After RLC304 departs Rosebluff Yard, a UP train switches on the southwest end of Rosebluff, mainly using Tracks 4, 5 and 6 though they have access to all six tracks. UP also has a train that arrives in the morning, pulls into Track 1 and usually doesn't leave until around 1500 hours, going eastbound across the Calcasieu River towards UP's Lake Charles yard. After that train leaves Rosebluff Yard, another UP train enters Rosebluff Yard from the southwest end, pulls into Track 1 and leaves anywhere from 15 to 60 cars in Track 1. When the UP is complete in Rosebluff, Track 4 is usually the only clear track left, waiting for arrival of RLC210.

SCHEDULE INCONSISTENCIES AND DELAYS IN ACCESSING ROSEBLUFF YARD

Even though UP and KCS have agreed that KCS' period for operating in Rosebluff Yard is to begin at 1800 hours, RLC210 is normally delayed in departing for Rosebluff by UP delays in exiting Rosebluff. Below is a chart showing when RLC210 entered Rosebluff Yard during the first half of this February. As you can see, more often than not, RLC210 was delayed over an hour in accessing Rosebluff Yard, often as much as several hours.

Date	IN	2/6/15	21:21	2/13/15	18:33
2/1/15	17:48	2/7/15	22:12	2/14/15	19:44
2/2/15	18:55	2/8/15	18:23	2/15/15	18:10
2/3/15	21:06	2/9/15	18:53	2/16/15	20:25
2/4/15	0:09	2/10/15	19:05	2/17/15	19:15
2/5/15	21:26	2/11/15	18:55		
		2/12/15	21:00		

A similar study for May to mid-June of 2014 showed that KCS is normally delayed more than an hour, and often several hours, past its 1800 hours start time for beginning work in Rosebluff

Yard:

Date	IN
5/1/14	19:38
5/2/14	21:57
5/3/14	20:22
5/4/14	21:17
5/5/14	21:27
5/6/14	19:34
5/7/14	22:10
5/8/14	22:33
5/9/14	22:52
5/10/14	20:46
5/11/14	20:57
5/12/14	18:15
5/13/14	18:09
5/14/14	18:20
5/15/14	23:22
5/16/14	23:59

5/17/14	18:33
5/18/14	19:41
5/19/14	20:49
5/20/14	18:43
5/21/14	18:34
5/22/14	23:59
5/23/14	22:50
5/24/14	2:20
5/25/14	17:57
5/26/14	holiday
5/27/14	20:43
5/28/14	21:58
5/29/14	21:00
5/30/14	20:42
5/31/14	21:05

6/1/14	19:11
6/2/14	18:08
6/3/14	17:58
6/4/14	17:58
6/5/14	22:42
6/6/14	19:47
6/7/14	17:46
6/8/14	18:09
6/9/14	18:48
6/10/14	17:52
6/11/14	22:49
6/12/14	2:28
6/13/14	19:33
6/14/14	17:40
6/15/14	22:36

When RLC210 is delayed in accessing Rosebluff Yard, the service it provides to customers it serves - Certaineed and BW Services (and Axiall A and B and PPG C on Saturday) - is delayed, as is RLC210's switching of the cars interchanged by UP to be spotted by RLC304. Therefore, the RLC304 crew is delayed in beginning its shift serving the Axiall, Tetra and PPG plants and in returning to Mossville with cars destined to the portion of Zone 1 north of the 50/50 Line or outbound from the Lake Charles area.

While from the KCS perspective delays in KCS accessing Rosebluff Yard appear to be due to UP, that does not necessarily mean that UP is doing something wrong in its operations. Many things can cause operating delays, from track structure problems to equipment breakdowns, surges in traffic, requests from shippers for more switching than normal, cars having been unloaded in a different order than they were delivered so additional switching is required, a locked gate at a plant or just heavier than normal traffic volumes. And there are problems outside the Rosebluff Lead itself, such as UP having to hold off the 50/50 Line on its way back to its Lake Charles yard due to a scheduled Amtrak train or the periodic opening of the bridge over the Calcasieu River. And time needed for regular track maintenance also impacts track time available to serve shippers.

Indeed, KCS experiences these types of problems, too. If we have a track problem (for example, if a switch point at a customer location breaks, as happened earlier this year), it will probably take a couple of hours for track maintenance personnel to get it fixed. Similarly, equipment breakdowns occasionally happen despite everyone's best efforts. These types of occurrences can delay or prevent service to a particular customer or track, or may affect operations more broadly.

These types of problems are common in railroading, but in a joint facility like the Rosebluff Lead, something that adversely impacts one carrier's operation will impact the other carrier as well, throwing the whole planned operating schedule off for both carriers. As shown above, operations on the Rosebluff Lead are commonly off schedule. When that occurs, it usually takes both parties several days to get operations back onto the agreed schedule.

Because operations on the Rosebluff Lead are often off schedule, the type of operation proposed by BNSF – where BNSF would have a two-hour window where no other operations could occur – simply cannot happen without significantly harming KCS' (and probably UP's) ability to serve their customers.

The operating window BNSF desires doesn't exist. As shown by Mr. Bartoskewitz's statement, more than half the time that BNSF wants set aside for its exclusive use, KCS is still operating in Rosebluff Yard. If KCS had to create a window for BNSF on a regular basis, KCS would have to terminate service to Axiall, Tetra or PPG before completing the services they wanted that day. And RLC304 would have to allow an extra margin of time – time it couldn't serve customers – to be certain that it was out of Rosebluff Yard and across the 50/50 Line before the BNSF-demanded window was set to begin.

The type of rigid scheduling BNSF proposes isn't compatible with the busy, constrained operating environment on the Rosebluff Lead. Expanding Rosebluff Yard doesn't appear possible with roads on each side and several highway overpasses stretching across it. KCS and UP already have to be very flexible with each other, adjusting start and stop times on a daily basis. Taking away that flexibility by creating a fixed operating window for a third carrier – or any other means of dividing track time on the Rosebluff Lead into three pieces rather than just

two - would further interfere with KCS and UP service to customers, service which BNSF alleges is already bad.

It is my opinion, based on many years' operating and supervisory experience with the Rosebluff Lead, that what BNSF proposes cannot be done without creating significant problems for KCS' (and probably UP's) ability to serve customers.

Rosebluff Lead, Zone 1 and Rosebluff Yard

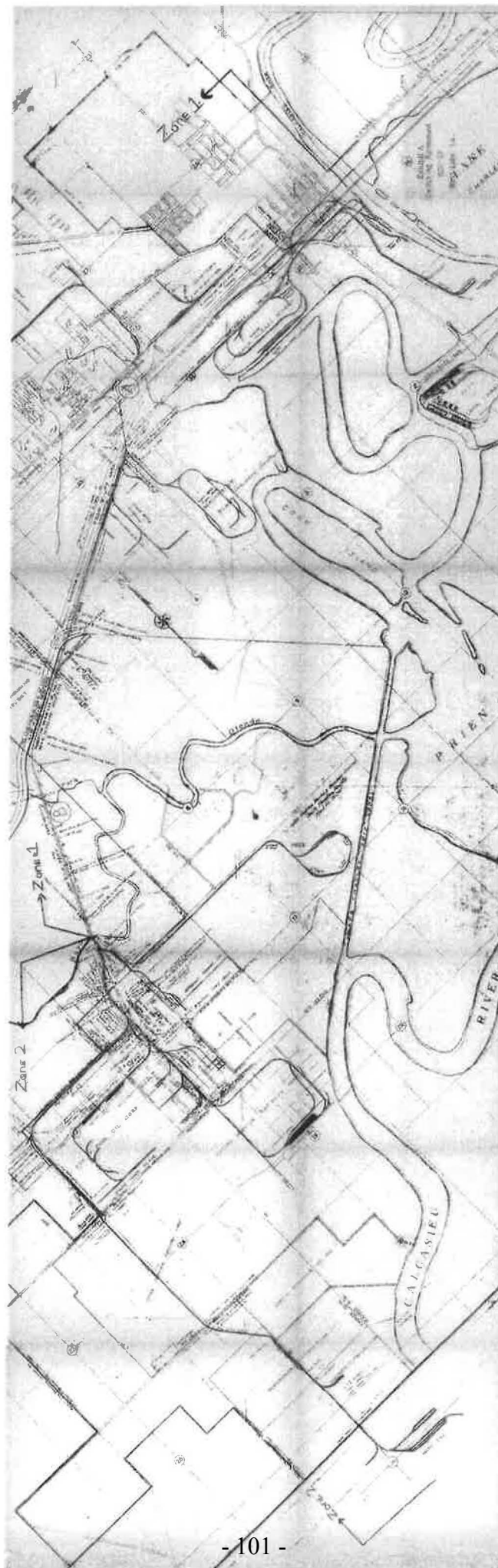


Rosebluff Lead, Zone 2



Exhibit 3

1981 KCS-SP AGREEMENT FOR ZONE SWITCHING;
1999 LETTER AGREEMENT TO DISCONTINUE BIENNIAL ZONE SWAP



UNION PACIFIC RAILROAD COMPANY

OPERATING DEPARTMENT



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January 13, 1999

Mr. T. J. Nelson
Senior Assistant Vice President -
Contracts and Industrial Development
The Kansas City Southern Railway Company
114 11th Street
Kansas City, Missouri 64105

Dear Tom:

Reference is made to our telephone conversation of January 8, 1999 and past discussions between representatives of our respective companies concerning the switching of Zones 1 and 2 in the Lake Charles, Louisiana area.

Agreement dated September 2, 1981, ("Agreement") between The Kansas City Southern Railway Company and Union Pacific Railroad Company, as successor in interest to Southern Pacific Transportation Company, covers the switching of the industrial area at West Lake - Lockmoor, Louisiana and divides this area in 2 switching zones, referred to as Zone 1 and Zone 2. Article I, Section D of the Agreement provides that SP will switch Zone 1 and KCS will switch Zone 2 for an initial 2 year period beginning March 1, 1981. Thereafter, upon written notice by either party to the other, either party may request a reversal of the zones to be switched. Notwithstanding the foregoing, past practice has been for the parties to reverse zones automatically every 2 years, effective March 1 of the appropriate year.

In response to concerns raised by various shippers located in Zones 1 and 2, KCS and UP agree that this reversal of switching for Zones 1 and 2 shall be suspended. Therefore, effective March 1, 1999, KCS will continue to switch Zone 1 and UP will continue to switch Zone 2.

Nothing contained in this letter agreement shall modify any of the terms or provisions of the Agreement, except to the extent provided for herein.

This letter is prepared in duplicate. Please acknowledge KCS' consent to the foregoing by signing this letter in the space provided below and returning one original to me for UP's records.

Very truly yours,

Jerry Wilmoth

ACKNOWLEDGED AND AGREED
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By: *J. P. Homan*
Title: *1-27-99*
Date: *SA. V.P.O.*

9/2/81

THIS AGREEMENT, made and entered into by and between THE KANSAS CITY SOUTHERN RAILWAY COMPANY, hereinafter sometimes called "Kansas Company", and SOUTHERN PACIFIC TRANSPORTATION COMPANY, hereinafter sometimes called "Southern Company",

WITNESSETH:

WHEREAS, under and by virtue of that certain agreement, dated September 19, 1934, among The Kansas City, Shreveport and Gulf Railway Company, owning company, and The Kansas City Southern Railway Company, operating company, and Texas and New Orleans Railroad Company, predecessor in interest to Southern Company, certain tracks of Kansas Company are used jointly by the parties hereto in the performance of railroad service to the plant of The Mathieson Alkali Works, Inc. and to other industries south of the Kansas Company's main track in the vicinity of West Lake, Calcasieu Parish, Louisiana;

WHEREAS, under and by virtue of that certain agreement, dated August 30, 1940, by and between The Kansas City Southern Railway Company and the said Texas and New Orleans Railroad Company, a portion of Kansas Company's main track and certain tracks connecting therewith are used jointly by the parties hereto in the performance of railroad service to the plant of The Continental Oil Company north of Kansas Company's main track in the vicinity of West Lake, Calcasieu Parish, Louisiana and, by supplemental agreements, dated May 5, 1951 and March 27, 1981, joint service was extended to the Continental Oil Black Company and to the linear alkylbenzene plant;

WHEREAS, under date of May 21, 1947, the United States and Reconstruction Finance Corporation deeded to The Kansas City Southern

Railway Company and the said Texas and New Orleans Railroad Company approximately 4.788 miles of industrial lead track and 1.635 miles of other tracks, together with right of way in Calcasieu Parish, Louisiana south of Southern Company's main track in the vicinity of Lockmoor, Calcasieu Parish, Louisiana and, under date of March 29, 1948, said railway companies entered into an agreement providing for the performance of railroad service on said trackage and other trackage which might be constructed by said parties;

WHEREAS, under and by virtue of that certain agreement, dated July 26, 1955, by and between the said Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company provision was made for the performance of railroad service on certain jointly-owned trackage on the west side of the Calcasieu River at Westlake, Louisiana and, also, on certain trackage owned by Lake Charles Harbor and Terminal District; and

WHEREAS, the parties hereto now desire, in the interest of the more efficient performance of railroad service in the territory covered by the aforesaid agreements, to change the method of performing switching service and maintenance from the ways in which it is provided to be performed in said agreements, and to amend said agreements in certain other respects,

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I

A. Effective March 1, 1981, the industrial area West Lake-Lockmoor, Calcasieu Parish, Louisiana shall be divided into Zones 1 and 2 with the dividing point between zones being that point at

2.

which the jointly-owned track acquired by deed of May 21, 1947 crosses Bayou D'Inde west of State Highway No. 108 and west of Rose Bluff Yard, all as shown on the map attached as Exhibit A hereto. Zone 1 shall be that area east of Bayou D'Inde (except for Rose Bluff Yard), including industries both north and south of the Kansas Company main track service to which is provided for in the said agreements of September 19, 1934, August 30, 1940 and July 26, 1955 and, in part, in the said agreement of March 29, 1948. Trackage (including industry trackage) in Zone 1 is shown in green on Exhibit A. Zone 2 shall be that area west of Bayou D'Inde including industries service to which is provided for in the said agreement of March 29, 1948. Trackage (including industry trackage) in Zone 2 is shown in red on Exhibit A.

B. Rose Bluff Yard shall be considered common to both zones, and all trackage therein may be used by either carrier, with the understanding, however, that such use shall be limited to the handling of cars destined to or originating in either Zone 1 or Zone 2. For operating efficiency, certain trackage in said yard shall, by agreement between the General Managers of the parties, or their authorized representatives, be designated for the primary use of one party or the other, but Kansas Company shall not use the designated Southern Company tracks for storage purposes, nor shall Southern Company use the designated Kansas Company tracks for storage purposes. Except for the exchange of cars destined to or from the Continental complex and for the exchange of cars destined to or from the Mathieson plant, both in Zone 1, the exchange between the carriers of all cars destined to or from either Zone 1 or Zone 2 shall be made

in Rose Bluff Yard. Cars to and from the Continental complex shall be exchanged at the Continental yard, and cars to and from the Mathieson plant shall be exchanged at the Mathieson yard.

C. Notwithstanding the provisions of Section 9 of Article I of the said agreement of September 19, 1934; of Section 10 of the said agreement of August 30, 1940; of Section 10 of the said agreement of March 29, 1948, and of Section THIRD:(a) of the said agreement of July 26, 1955, Southern Company shall switch Zone 1 and Kansas Company shall switch Zone 2; provided that, at any time after the expiration of two (2) years from the effective date of this agreement, either party may, after giving notice in writing, on or before January 1 of any second year after the effective date hereof, cause a reversal of the zones to be switched, as hereinabove described, after which Kansas Company shall switch Zone 1 and Southern Company shall switch Zone 2 until they shall agree otherwise in accordance with the same procedure. It is the intent of this agreement that the performance of switching within the territory described hereinabove shall be divided between the parties as equitably as possible consistent with efficiency; therefore, modification of zones shall be accomplished only as the result of a study of operations conducted jointly by the parties.

D. New or expanded industries which may locate in the West Lake-Lockmoor industrial area subsequent to the effective date of this agreement shall be assigned to the zone in which situated geographically, except that, in the event of construction of new trackage in which the industry switch is located inside one zone, but the trackage extends into the other zone, such industry shall

be served by the carrier serving the zone in which said switch is located.

E. It is understood that either party hereto may handle solid over-the-road unit trains (here defined, for all purposes of this agreement, as trains of 25 cars or more loaded with the same commodity on one bill of lading on the same day) to an industry located in the zone other than that in which it performs switching service. In the event of derailment or other accident involving any such unit train, wreckage shall be cleared by and at the sole expense of the party operating said train, except in emergencies, when wreckage may be cleared by the other party at the sole expense of the party operating said train.

F. Except as provided herein and in paragraph E hereinabove, work, wreck or construction service shall be performed by the party switching the zone in which said service is to be performed; provided, however, in the event of derailment in the vicinity of Rose Bluff Yard, between Points A and B described in Article II A hereinafter, clearing and rerailing shall be performed by the party handling the train or cars derailed, except in emergencies (herein defined as interruption to service due to wreck, fire, storm, flood, explosion or other occurrence beyond the control of either party requiring immediate action to protect people or property), when it may be performed by the other party and the costs thereof shall be borne as provided in the liability provisions of the pertinent agreement. Track damage shall be repaired by the company maintaining said track.

ARTICLE II

A. Notwithstanding the provisions of Section 4 of the said

5.

agreement of March 29, 1948 (as supplemented by letter of September 24, 1969), the responsibility for maintenance, repair and renewal of all railroad-owned facilities (except the yard office-locker room), including signalling and crossing protection, extending from point of connection to Southern Company's trackage at Point "A" on Exhibit A to the south end of Zone 2 shall be divided at the south end of the bridge over Maple Fork, shown as Point "B" on Exhibit A. The company performing switching in Zone 1 pursuant to Article I hereof shall be responsible for maintenance between Point A and Point B, and the company performing switching in Zone 2 shall be responsible for maintenance of the remainder of the trackage covered by said agreement. Should the maintaining company fail to repair any defect in the jointly-used trackage within a reasonable time after the other company shall have notified it in writing, specifying the defect, and requesting that it be repaired, then said other company shall have the right to make the necessary repairs at once, and may do so, and the cost thereof shall be borne as provided in Paragraph B hereof.

B. Kansas Company shall continue to maintain, repair and renew its trackage covered by the said agreements of September 19, 1934, and August 30, 1940, and Southern Company shall continue to maintain the jointly-owned trackage covered by the said agreement of July 27, 1955, as amended by Letter Exchange of the Chief Engineers of the parties. The cost of maintenance, repair and renewal of all jointly-used trackage covered by said agreements shall be borne by the parties as provided therein. The cost of maintenance, repair and renewal of the trackage described in Paragraph A hereinabove

shall be borne by the parties in such proportions as the number of loaded cars handled for the account of each party, on each segment of trackage monthly, bears to the total number of loaded cars handled on said trackage during said month. In rendering bills for maintenance, each party shall apply Circular GMA No. 2710-D, "Rules Covering Preparation of Joint Facility And Other Bills between Carriers," revised July 1, 1980, of the General Managers' Association of Chicago, or any agency successor thereto, supplements and amendments thereto, and reissue thereof. Rates for equipment rental shall be those prescribed in GMA Circular No. 2636-E, "Schedule of Equipment Rental And Other Rental Rates for Use Between Carriers," revised January 1, 1980, and as supplemented or revised from time to time.

C. The division of cost under Paragraph B of this article shall be subject to adjustment at the end of each 12-month period subsequent to March 1, 1981 on the basis of the total number of loaded cars handled for each party during said period.

D. Loaded cars, including loaded cars in unit trains, shall be counted as provided in the separate agreements of September 19, 1934; August 30, 1940 and July 26, 1955. Loaded cars handled on trackage covered by the agreement of March 29, 1948 destined to or received from an industry located adjacent to said track shall be counted once when entering or once when leaving each zone thereof, cars entering and leaving a zone but not spotted to an industry within the zone shall receive only one count, and loaded cars originating and terminating within the same zone shall receive one count. Per-loaded-car charges for handling shall, until otherwise provided

for, be continued to be paid as specified in supplements, dated December 19, 1977, to the said agreements of September 19, 1934; August 30, 1940, and March 29, 1948. Until it shall be otherwise agreed, cars handled to and from the riverfront trackage, in Zone 1, served pursuant to the said agreement of July 26, 1955, shall be paid for at the rate of Twenty and No/100 Dollars (\$20.00) per loaded car.

E. Each party shall maintain its owned portion of the yard office-locker room, and shall include the cost thereof in its bill against the other party for maintenance under Paragraph B of this article.

ARTICLE III

A. The payment of interest rental and taxes under any of the said agreements described in the recitals hereof shall be unaffected by this agreement.

B. The cost of additions and betterments or retirements to or from any of the jointly-used facilities covered hereby shall be borne in accordance with the provisions of the applicable base agreement, except that the cost of construction of certain trackage presently being constructed at and in the vicinity of Rose Bluff Yard, aggregating 21,055 track feet, more or less, and siding 4,250 track feet, more or less, adjacent to the Davison Lead, shall be borne in the first instance by Kansas Company. Southern Company shall reimburse Kansas Company one-half the cost of said new trackage in the vicinity of Rose Bluff Yard. In the event Southern

Company uses the siding adjacent to the Davison Lead, it shall reimburse Kansas Company one-half the cost thereof.

Kansas Company shall furnish all materials for and shall construct, and shall own, said new trackage, but in consideration of Southern Company's payment of one-half the cost of such new trackage, no interest rental or other usage charge shall be made for its use. It is understood that Southern Company will pay one-half property taxes due on the 21,055 feet of trackage in the vicinity of Rose Bluff Yard, but not on the 4,250-foot siding until it shall use said track.

ARTICLE IV

A. Liability for loss and damage to property or injury to or death of persons shall be borne in accordance with Paragraph 4 of supplemental agreements dated December 19, 1977, to the said agreements of September 19, 1934, August 30, 1940, and March 29, 1948, and as specified in Article IV B hereinafter with respect to operation and maintenance of trackage covered by the said agreement of July 26, 1955. Anything in any of said agreements (including that of July 26, 1955, as herein amended) to the contrary notwithstanding, a unit train shall be deemed to be the Exclusive Equipment or Appliance (as that term is used in the above-mentioned supplemental agreements and Article IV B hereof) of the party hereto in whose account said train or the cars thereof may be.

The employees handling each unit train shall be deemed to be the Sole Employee (as that term is used in the above-mentioned supplemental agreements and Article IV B hereof) of that party in whose account said train or the cars thereof may be.

B. Sections FIFTH, SIXTH and SEVENTH of the agreement of July 26, 1955, are hereby stricken in their entirety and the following substituted in lieu thereof:

FIFTH. A. DEFINITIONS: For the purposes of this Agreement, the following definitions shall apply:

1. 'Damages' shall mean all payments made or liability for loss of or damage to any and all property, and for injuries to or death of any and all persons suffered or occasioned in connection with the maintenance, repair, renewal or operation of, the making of additions and betterments to, or operation on or over the jointly-used tracks, whether under any state or federal law, or by compromise or settlement, together with all costs and expenses incident thereto.

2. 'Joint Employee' shall mean and include any and all officers and other employees of either company while actually engaged in the maintenance, repair, renewal or operation, the making of additions and betterments to, or operation on or over the jointly-used tracks in switching service hereunder, or while engaged in rerailling cars and equipment, picking up, removing or clearing wrecks or obstructions thereon.

3. 'Sole Employee' shall mean and include any and all persons employed by or on behalf of either party, except while occupying the status of Joint Employee.

4. 'Exclusive Equipment or Appliance' shall mean the equipment or appliances solely owned by, or in the possession or control of a party, except equipment or appliances being used or operated on the jointly-used tracks by a Joint Employee; provided, however, that, with respect to cars, it shall mean those in the per diem account of a party.

5. 'Joint Property' shall mean and include the jointly-used tracks and any and all property (including locomotives) owned or used by or on behalf of either party in switching service hereunder.

Singular forms of any of the terms herein defined shall comprehend and encompass the plural forms of any of such terms.

B. ALLOCATION OF LIABILITY: Damages shall be borne by the parties as hereinafter provided:

1. When caused by:
 - a. the acts or omissions of a Sole Employee of one of the parties; or
 - b. the concurring acts or omissions of a Joint Employee and of a Sole Employee of one of the parties; or
 - c. any defect or failure of any kind in the Exclusive Equipment or Appliance of one of the parties; or
 - d. the acts or omissions of a Joint Employee concurring with a defect or failure of any kind in the Exclusive Equipment or Appliance of one of the parties,

Damages shall be borne by the party in whose employment such Sole Employee may be, or by the party whose Exclusive Equipment or Appliance was defective or failed, whether or not concurring with the acts or omissions of third persons (that is, those persons other than Sole or Joint Employees).

2. When caused by:

- a. the concurring acts or omissions of a Sole Employee of each of the parties; or
- b. the concurring acts or omissions of a Joint Employee and of a Sole Employee of each the parties; or
- c. defects of any kind in the Exclusive Equipment or Appliance of each of the parties; or
- d. the acts or omissions of a Joint Employee; or
- e. the failure of or a defect in Joint Property; or
- f. any other cause whatsoever not hereinbefore provided for,

Damages shall be borne by each party as to its Exclusive Equipment or Appliance (except the cost of rerailing cars) property in its custody or control and property upon its cars, and, as to its Sole Employees, passengers or persons on its locomotives, cars or trains, while as to third persons and their property, Joint Employees and their property, and/or Joint Property, Damages shall be borne by the parties equally. For the purpose of this paragraph, Damages which are borne equally by the parties shall be understood to include all costs and expenses arising out of or incident to the rerailing of locomotives, cars and other equipment.

Anything in this Paragraph FIFTH to the contrary notwithstanding, in case of accident in which the locomotives, cars, trains (other than locomotives, cars or trains while occupying the status of Joint Property) or Sole Employees of only one of the parties are involved, or are in its sole service, then the liability for the resulting Damages shall be borne solely by that one of the parties whose locomotives, cars, trains or Sole Employees are solely involved.

Anything hereinabove to the contrary notwithstanding, neither party shall have any claim against the other for Damages of any kind caused by or resulting from interruption or delay to its business.

Each party shall pay all Damages for which such party shall be liable hereunder, and shall indemnify and save harmless the other party against the payment of any such Damages.

In case a suit shall be commenced against either party for or on account of Damages for which the other party is solely or jointly liable hereunder, the party so sued shall give to such other party notice in writing of the pendency of such suit and thereupon such other party shall assume or join in the defense of such suit.

Either company may make settlement of any and all claims for injury to or death of persons, or for loss of or damage to property, for which the parties are jointly liable hereunder,

except that no such settlement may be made in excess of Five Thousand Dollars (\$5,000) without the prior written consent of the other company. Upon the making of any voluntary settlement as aforesaid, a release shall be procured from each claimant which shall be in form sufficient to discharge both parties to this Agreement from liability on account of such claim, and a copy thereof shall be furnished each company.

Each party assumes liability for its failure to comply with any law or governmental regulation, and agrees to reimburse and indemnify the other party for any fines, penalties, cost or charges resulting from any violation of such law or regulation. In the event of violation of the Safety Appliance Act for which the switching carrier is fined, the party in whose account the car is shall reimburse the switching party the amount paid in satisfaction of such fine.

ARTICLE V

This agreement shall be construed liberally so as to secure to each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party.

ARTICLE VI

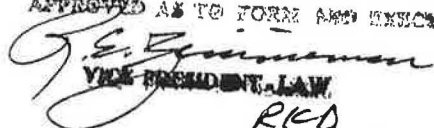
This agreement shall be effective March 1, 1981, and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as of this, the 2ND day of September, 1981.

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

By 

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

APPROVED AS TO FORM AND EXECUTION: By 

VICE PRESIDENT - LAW
RKD
9/21/81
Assistant to Vice President

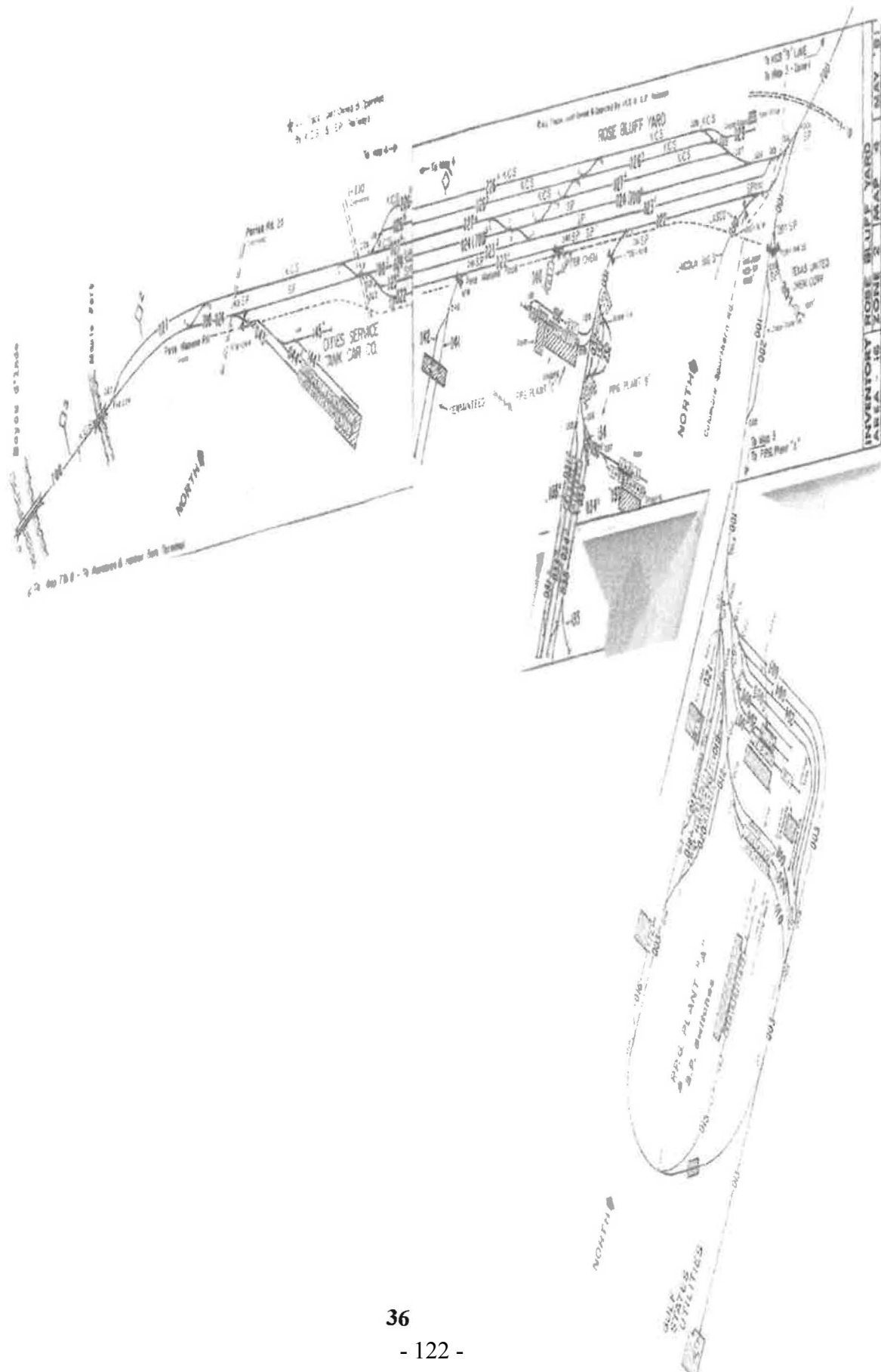

Oct 21/81

Exhibit 4

KCS SLIC BOOK PAGES, ROSEBLUFF YARD

Exhibit 5

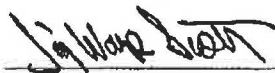
KCS SLIC BOOK PAGES, ROSEBLUFF YARD AND ADJOINING SHIPPERS



VERIFICATION

I, Jimmy Wayne Scott, 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 21st day of August, 2015 at Westlake, Louisiana.



Jimmy Wayne Scott
Senior Trainmaster
The Kansas City Southern Railway Company

PUBLIC VERSION

**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**

**KCS'S REPLY TO BNSF RAILWAY COMPANY'S OPENING STATEMENT AS
SUPPLEMENTED ON MAY 11, 2018**

EXHIBIT B

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

**RESPONSES AND OBJECTIONS OF BNSF TO
THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
SECOND SET OF DISCOVERY REQUESTS TO BNSF**

BNSF Railway Company ("BNSF") responds as follows to The Kansas City Southern Railway Company's ("KCSR") Second Set of Discovery Requests to BNSF:

GENERAL RESPONSES

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

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

GENERAL OBJECTIONS

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

1. **Privilege.** BNSF objects to KCSR's discovery requests to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege or protection. Any production of privileged or otherwise

protected documents is inadvertent and shall not constitute a waiver of any claims of privilege or other protection.

2. **Relevance/Burden.** BNSF objects to KCSR's discovery requests to the extent that they seek information or documents that are not directly relevant to this matter, to the extent that they seek documents in a form not maintained by BNSF in the regular course of business, to the extent that a response would impose an unreasonable burden on BNSF, and to the extent that they seek information or documents that are as readily, or more readily, available to KCSR as BNSF.

3. **Confidential Information.** BNSF objects to the KCSR discovery requests to the extent that they seek information or documents that constitute or disclose confidential, proprietary, or sensitive nonpublic information. Subject to and without waiving this objection, BNSF will produce information responsive to KCSR's discovery requests, if not otherwise objectionable, subject to the terms of the Protective Order in this proceeding. BNSF reserves the right to seek additional protection as needed.

4. **Third Party Information.** BNSF objects to the KCSR discovery requests to the extent that they seek information or documents that constitute or disclose information that would result in the violation of any contractual obligation to a third party, or in the violation of 49 U.S.C. § 11904, which relates to the disclosure of certain shipper or consignee information.

5. **Settlement/Mediation.** BNSF objects to production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any proceeding.

6. **Instruction No. 1.** BNSF objects to Instruction No. 1 as unduly burdensome, overbroad, and seeking information that is neither relevant nor reasonably calculated to lead to

the discovery of admissible evidence. Where BNSF agrees to produce responsive documents, BNSF will only search for and provide information created on or after January 1, 2015 to May 25, 2018.

7. BNSF incorporates these General Objections into each Objection below as if fully set forth therein.

OBJECTIONS AND RESPONSES TO KCSR DISCOVERY REQUESTS

KCSR Interrogatory No. 1: *The Petition states “BNSF continues to believe that BNSF should be responsible for payment to UP of the level of compensation that BNSF must pay for trackage rights under the UP/SP merger conditions – namely the rate set by Section 9 of the BNSF Settlement Agreement (the GTM rate), as escalated by Section 7 of the CMA Agreement (and as modified by BNSF and UP in the 50/50 Line Agreement) (collectively, the “Prescribed Fee”). UP should then be responsible for any compensation due to KCS for BNSF access to the Rosebluff Lead beyond the Prescribed Fee.*

- (a) *Has BNSF already developed or is BNSF in the process of developing a compensation proposal that would be different than the rate proposed by BNSF's statement above?*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF objects to this interrogatory because it would require the disclosure of information that is protected by the attorney-client privilege, work product doctrine, or otherwise protected or privileged, exempted, or excluded from discovery or disclosure by an applicable privilege, protection, rule, or doctrine.

- (b) *Does BNSF contend that “the rate set by Section 9 of the BNSF Settlement Agreement (the GTM rate), as escalated by Section 7 of the CMA Agreement (and as modified by BNSF and UP in the 50/50 Line Agreement) (collectively, the “Prescribed Fee”)” fulfills BNSF's obligation to pay UP and KCS compensation consistent with “the principle controlling compensation in condemnation proceedings”?*

BNSF Response: BNSF contends that BNSF is not obligated by 49 U.S.C. § 11102(a) to “pay UP and KCS compensation consistent with ‘the principle controlling compensation in condemnation proceedings,’” but rather that the statute allows the Board to establish such

compensation terms if BNSF, UP, and KCS cannot agree to establish such terms. As set forth in its Petition, BNSF contends that BNSF should be responsible for payment to UP of the Prescribed Fee, and that UP should then be responsible for any compensation due to KCS for BNSF access to the Rosebluff Lead beyond the Prescribed Fee. BNSF has requested that the Board (1) establish compensation terms “under the principle controlling compensation in condemnation proceedings,” (2) require BNSF to pay UP the Prescribed Fee, and (3) require UP to pay KCS any amount due to KCS under the compensation terms established by the Board that is greater than the Prescribed Fee.

(c) *Has BNSF developed or developing a compensation analysis using the precedent set forth in the SSW Compensation cases?*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF objects to this interrogatory because it would require the disclosure of information that is protected by the attorney-client privilege, work product doctrine, or otherwise protected or privileged, exempted, or excluded from discovery or disclosure by an applicable privilege, protection, rule, or doctrine.

KCS Interrogatory No. 2: *If BNSF’s request to directly serve Lyondell is granted, under the existing commercial contract between BNSF and Lyondell, is Lyondell obligated to provide BNSF with 100% of its business during the term of the existing contract?*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF states that the Board has already granted BNSF direct operating rights to serve the Lyondell facility and that the BNSF Petition contains no “request to directly serve Lyondell.” *See Decision No. 4*, slip op. at 5-6 (“the terminal trackage rights over the Rosebluff Lead granted in *Decision No. 3* encompass BNSF’s direct access to all Lake Charles area shipper facilities accessible via the Rosebluff Lead and covered by the Lake Charles Merger Conditions” – including the Lyondell facility). BNSF further states that, under the

existing commercial contract between BNSF and Lyondell, Lyondell is not obligated to provide BNSF with 100% of its business during the term of the existing contract.

KCS Interrogatory No. 3: *If BNSF's request to directly serve Lyondell is granted, under the existing commercial contract between BNSF and Lyondell, will Lyondell be physically served only by BNSF trains?*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF states that the Board has already granted BNSF direct operating rights to serve the Lyondell facility and that the BNSF Petition contains no "request to directly serve Lyondell." BNSF further states that the existing commercial contract between BNSF and Lyondell does not require Lyondell to be physically served only by BNSF trains.

KCS Interrogatory No. 4: *If BNSF's request to directly serve Lyondell is granted, under the existing commercial contract between BNSF and Lyondell, is it possible that both UP trains and BNSF trains may be operating on the Lyondell tracks during any portion of a 48 hour time period?*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF states that the Board has already granted BNSF direct operating rights to serve the Lyondell facility and that the BNSF Petition contains no "request to directly serve Lyondell." BNSF further states that, under the existing commercial contract between BNSF and Lyondell, it is possible that both UP trains and BNSF trains may be operating on the Lyondell tracks during any portion of a 48-hour time period.

KCSR Document Request No. 1: *Produce all Documents; Agreements; Communications; and Studies, Analyses and Reports sufficient to show whether and how BNSF plans to assemble/block Lyondell cars up for transit at the Lake Charles Facility prior to traversing the Montell Lead, Connecting Track, Rosebluff Yard, and Rosebluff Industrial Lead in route to the Lacassine Yard.*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF directs KCSR to the following documents produced by BNSF in response to UP's First Set of Discovery Requests to BNSF: BNSF-C-000627, 638, 640, 643,

645, 647, 650, 653, 657, 658, 659, 662, 663, 665, 667, 668, 669, 671, 676, 679, 680, 681, 683, 688, 691, 694, 696, 699, 700, 703, 705, 709, 712, 713, 714, 715, 717, 719, 721, 723, 725, 726, 727, 729, 730, 731, 732, 733, 2919, 2920, 2939, 2943, 2945, 2954, 2955-82, 2983, 2992; BNSF-HC-0002859, 2864, and 3006. Furthermore, BNSF states that it will produce any documents it may identify that are responsive to this request.

KCSR Document Request No. 2: *Produce all Documents; Agreements; Communications; and Studies, Analyses and Reports related to BNSF's response to Interrogatory No. 1 and each of its subparts.*

BNSF Response: As related to Interrogatory No. 1(a) and 1(c), BNSF objects to this request on the same grounds set forth above in response to Interrogatory No. 1(a) and 1(c). Subject to this objection, and without waiving the General Responses and General Objections set forth above, BNSF states that that it will produce any documents it may identify that are responsive to Interrogatory No. 1(b).

KCSR Document Request No. 3: *Produce financial statements, including income statements, statements of cash flows, and balance sheets, for BNSF traffic in Zone 2 of the Rosebluff Industrial Lead for the years 2015 to the present.*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF states that BNSF does not produce financial statements for BNSF traffic in Zone 2 of the Rosebluff Lead. Furthermore, BNSF states that it will produce the BNSF Railroad Annual Report R-1 for the years 2015, 2016, and 2017.

KCSR Document Request No. 4: *Produce all Documents; Agreements; Communications; and Studies, Analyses and Reports conducted by or for BNSF from 2015 to the present related to or based on actual revenue that BNSF generates from all shippers in Zone 2 of the Rosebluff Industrial Lead.*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF states that it will produce any documents it may identify that are responsive to this request.

KCSR Document Request No. 5: *Produce all Documents; Agreements; Communications; and Studies, Analyses and Reports conducted by or for BNSF from 2015 to the present related to potential revenue that BNSF will generate should it elect to provide direct service to other shippers in Zone 2 of the Rosebluff Industrial Lead.*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF states that it will produce any documents it may identify that are responsive to this request.

KCSR Document Request No. 6: *Produce all forecasts and all Documents related to forecasts or projections prepared by or for BNSF from 2015 through the present, or in BNSF's possession, of future traffic volumes and/or revenues for freight traffic by traffic group (by commodity classification, geographic region, line segment, or any other category where possible) to be moved by BNSF over the Rosebluff Industrial Lead. Documents responsive to this request include, but are not limited to, traffic projections prepared in connection with engineering studies, marketing studies, or other analogous reports.*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF states that it will produce any documents it may identify that are responsive to this request.

KCSR Document Request No. 7: *Produce all Documents; Agreements; Communications; and Studies, Analyses and Reports related to BNSF's responses to Interrogatories 2, 3, and 4.*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF states that it will produce the Transportation Service Agreement between BNSF and Lyondell, previously produced in redacted form as BNSF-HC-0003044, with fewer redactions, to support BNSF's statements in response to KCSR Interrogatory Nos. 2, 3, and 4.

KCSR Document Request No. 8: *Produce all Documents; Agreements; Communications; and Studies, Analyses and Reports (a) relating to or relied upon in BNSF's Rebuttal and in any Verified Statements appended to BNSF's Rebuttal or any of the exhibits attached thereto; (b) concerning or supporting any of the facts, analyses, contentions, or claims asserted in the BNSF's Rebuttal or in any Verified Statements; or (c) relating to, consulted or relied upon by the witnesses in preparing, writing, verifying, confirming, or drafting BNSF's Rebuttal and any Verified Statements.*

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF states that it will provide, shortly after BNSF files its Rebuttal, the workpapers for any Verified Statements appended to BNSF's Rebuttal.

Respectfully submitted,



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Dated: June 11, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2018, copies of the foregoing Responses and Objections of BNSF to KCSR's Second Set of Discovery Requests to BNSF have been served by e-mail on counsel for Union Pacific and The Kansas City Southern Railway Company.

A handwritten signature in black ink, appearing to read "Adrian L. Steel, Jr.", written over a horizontal line.

Adrian L. Steel, Jr.