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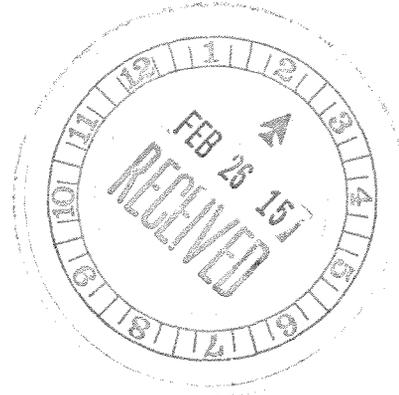
February 26, 2015

BY HAND DELIVERY

Cynthia T. Brown
Chief, Section of Administration
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Surface Transportation Board
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Adrian L. Steel, Jr.
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Re: Finance Docket No. 32760 (Sub-No. 46), BNSF
Railway Company--Terminal Trackage Rights--
The Kansas City Southern Railway Company and
Union Pacific Railroad Company



Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of BNSF's Reply to KCSR's Motion to Compel Responses to Second Discovery Requests Directed to BNSF Railway Company. A CD is also enclosed with the text of the pleading in Word Format.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files.

Please contact me if you have any questions. Thank you.

Sincerely yours,

A handwritten signature in black ink that reads "Adrian L. Steel, Jr." with a stylized flourish at the end.

Adrian L. Steel, Jr.

Enclosures

cc: Edward D. Greenberg, Esq.
William A. Mullins, Esq.
Michael L. Rosenthal, Esq.
All parties of record

Before the
SURFACE TRANSPORTATION BOARD

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

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

APPLICATION FOR TERMINAL TRACKAGE RIGHTS

**BNSF's Reply to KCSR's Motion to Compel Responses to Second Discovery Requests
Directed to BNSF Railway Company**

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February 26, 2015

Before the
SURFACE TRANSPORTATION BOARD

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

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

APPLICATION FOR TERMINAL TRACKAGE RIGHTS

**BNSF's Reply to KCSR's Motion to Compel Responses to Second Discovery Requests
Directed to BNSF Railway Company**

BNSF Railway Company ("BNSF") hereby replies to The Kansas City Southern Railway Company's ("KCSR") Motion to Compel Responses to Second Discovery Requests Directed to BNSF ("Motion") filed in the above-referenced proceeding on February 6, 2015. As explained below, because BNSF has fully and adequately responded to each KCSR Second Discovery Request covered by the KCSR Motion, KCSR's Motion should be denied.

I. Background

As described in more detail in BNSF's Opening Statement filed on December 31, 2014, at 4, the Board imposed trackage rights conditions on the UP/SP merger that provide BNSF the right (1) to handle traffic of shippers open to all of UP, SP, and KCSR at Lake Charles and Westlake; and (2) to handle traffic of shippers open to SP and KCSR at West Lake Charles (collectively, the "Lake Charles Condition"). *See* Finance Docket No. 32760, Decision No. 44, 1 S.T.B. 233 (served Aug. 12, 1996) ("Decision No. 44"). The rights that the STB granted to BNSF include both direct train service and reciprocal switch. *See* Exhibit 1 to BNSF's Opening Statement, BNSF Settlement Agreement, Section 5(c). In its Application and Opening Statement,

BNSF has requested that the Board confirm the Lake Charles Condition through the imposition of terminal trackage rights over the Rosebluff Industrial Lead at West Lake Charles.

KCSR submitted KCSR's Second Discovery Requests to BNSF on January 13, 2015, and BNSF submitted a timely response to the KCSR requests on January 28, 2015 (the "BNSF January 28 Response"). On February 6, KCSR filed its Motion, requesting that the Board order BNSF to provide further responses to certain of the KCSR Second Discovery Requests. KCSR filed its Motion without previously contacting BNSF's counsel to raise its concerns as to BNSF's discovery responses.

On February 20, BNSF submitted a letter to KCSR, attached here as Exhibit A (the "BNSF February 20 Letter"), seeking to amicably resolve several of the issues raised by KCSR in its Motion. In its February 20 Letter, BNSF agreed to produce additional documents responsive to KCSR's Second Discovery Requests, clarified the privileged status of certain documents already produced by BNSF, explained the basis for redacting certain documents produced by BNSF, further explained BNSF's position on the scope of BNSF's responses to certain KCSR discovery requests, and sought further clarity from KCSR on the intent of certain KCSR discovery requests. BNSF produced the documents on February 20, 2015. As of the date of this filing, KCSR has not responded to the BNSF February 20 Letter.

This terminal trackage rights proceeding should be a straightforward technical exercise to implement the Lake Charles Condition. As discussed further below, the KCSR Motion to Compel is a transparent attempt to further delay the implementation of that Condition and to re-litigate issues fully aired nearly twenty years ago.

II. The Board Should Deny the KCSR Motion to Compel Because BNSF Has Fully and Adequately Responded to the KCSR Second Discovery Requests.

As shown below, BNSF has complied with the Board's discovery rules in fully and adequately responding to each KCSR Second Discovery Request covered by the KCSR Motion. Therefore, no further BNSF response is necessary, and the Board should deny the KCSR Motion in its entirety.

A. Competitive Effectiveness

KCSR Document Request Nos. 2, 10 and 12 relate to "BNSF's claims about competition and BNSF's desires to switch to direct service, versus continuing with service via reciprocal switch." Motion at 15. KCSR alleges, erroneously, that "if BNSF is already successfully competing and already providing CITGO with the competitive option that BNSF claims the Board deemed 'critical,' there is no justification for the grant of intrusive terminal trackage rights." *Id.* Through Document Request No. 2, KCSR seeks documents relating to BNSF marketing efforts with respect to transporting any industrial product to or from CITGO's Lake Charles facility. Through Document Request No. 10, KCSR seeks documents relating to BNSF's rates vis-à-vis rates provided by other carriers for any product transported to or from CITGO's Lake Charles facility. Finally, through Document Request No. 12, KCSR seeks documents "relating to any cost savings BNSF may incur by providing direct unit train service to CITGO's Lake Charles area facility instead of continuing to serve CITGO via a reciprocal switch provided by UP."

As BNSF stated in its January 28 Response, each of KCSR Document Request Nos. 2, 10, and 12 seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that the requests seek documents unrelated to the standards

for terminal trackage rights under 49 U.S.C. § 11102. *See* BNSF January 28 Response at 8-9, 12, and 13.

In its Reply to the first KCSR Motion to Compel at 4-6, filed on February 4, 2015 (“BNSF First Reply”), BNSF established that the “competitive effectiveness” of the Lake Charles Condition is *not* at issue in this proceeding. In Decisions Nos. 44 and 63 of the UP/SP merger proceeding, the Board decided that the Lake Charles Condition was competitively necessary in order to address the potential loss of competition resulting from the UP/SP merger. On its face, the Lake Charles Condition means what it says: BNSF has the right to serve shippers in the Lake Charles Area by direct service over trackage rights or by reciprocal switch. KCSR’s attempt to raise an issue concerning the “competitive effectiveness” of that condition now is nothing more than a transparent attempt to re-litigate an issue that was resolved adversely to KCSR years ago.

KCSR sought reconsideration in 1996 of the Lake Charles Condition, and the Board specifically rejected the KCSR competition argument in Decision No. 63, including the argument that KCSR itself provided a sufficient remedy for the loss of competition resulting from the UP/SP merger. *See* BNSF Opening Statement at 5-7.¹ The Lake Charles Condition cannot now be changed absent a reopening of the UP/SP merger. The Board’s merger conditions vested rights not only in BNSF but also in shippers, and KCSR cannot seek to modify a merger condition, including the Lake Charles Condition, without the participation of all beneficiaries of the merger conditions. *See* Decision No. 44, 1 S.T.B. at 247 n.15; *see also* Finance Docket No.

¹ In rejecting KCSR’s argument, the Board stated: “Moreover, we continue to believe that the conditions we imposed, by building upon a privately negotiated settlement agreement, as endorsed by all relevant shippers, offer a better competitive solution than KCS has offered.” Finance Docket No. 32760, Decision No. 63, slip op. at 9 (STB served Dec. 4, 1996) (“Decision No. 63”).

32760 (Sub-No. 21), Decision No. 21, slip op. at 6 (STB served Dec. 20, 2001) (BNSF and shippers have independent rights to seek Board intervention “to ensure that the conditions [the Board] imposed on the merger are implemented in a manner that effectively preserves pre-merger competition.”).

KCSR’s suggestion that it needs the information requested by Document Request Nos. 2, 10 and 12 to analyze the “competitive effectiveness” of the Lake Charles Condition and the question of whether direct BNSF train service is “competitively justified” is disingenuous and invokes a completely irrelevant standard. The “public interest” element of 49 U.S.C. § 11102(a) does not require a determination of “competitive effectiveness,” but rather was determined by the Board to have been satisfied by the provisions of the BNSF and CMA Agreements, which the Board imposed as conditions to the UP/SP merger in Decision No. 44 and again emphatically confirmed in Decision No. 63. The Board’s decisions found those agreements to be in the public interest and necessary to preserve pre-merger competition. Under those agreements—in particular, the CMA Agreement—CITGO and other Lake Charles area shippers have a right to direct service from BNSF. Here, CITGO has determined that it wants to utilize that right since, in its business judgment, it needs direct unit train service to its Lake Charles facility.

Thus, KCSR’s invitation to assess the “competitive effectiveness” of indirect BNSF service and to treat the public interest issue as contestable in this proceeding is meritless. KCSR can, of course, challenge the continued necessity of the UP/SP merger conditions and the public interest determination that the Board made in the UP/SP proceeding, but it cannot do so here through a thinly veiled collateral attack on long-settled conditions. Instead, if KCSR wishes to re-litigate the issues it lost in 1996, it must petition to reopen the UP/SP merger proceeding in order to allow all concerned parties the opportunity to participate.

The information requested by KCSR Document Request Nos. 2, 10 and 12 has nothing to offer with respect to the Board's "public interest" standard that controls in this proceeding, and the information would not "affect the outcome of this proceeding." *Waterloo Ry.—Adverse Aban.— Lines of Bangor & Aroostook R.R. & Van Buren Bridge Co. in Aroostook Cnty., Me.*, AB 124 (Sub-No. 2) et al., slip op. at 2 (STB served Nov. 14, 2003) ("*Waterloo*"). The information is therefore irrelevant to this proceeding and excluded from the scope of BNSF documents that KCSR may request through discovery. The Board should deny the KCSR Motion with respect to KCSR Document Request Nos. 2, 10 and 12.

B. Potential for Interference

KCSR claims that a number of the KCSR Second Discovery Requests at issue here—namely Interrogatory No. 1 and Document Request Nos. 1, 5, and 8—relate to the potential for interference on the Rosebluff Industrial Lead should the Board impose the terminal trackage rights requested by BNSF in this proceeding. Specifically, KCSR is "concerned that adding BNSF direct service will substantially impair the ability of KCSR and UP to use the facilities to handle their own business." Motion at 10.

1. KCSR Interrogatory No. 1

With respect to Interrogatory No. 1, which seeks an explanation of why a hypothetical operational issue "would not interfere with KCSR's operations," BNSF has provided a full and adequate response. The alleged "operational issues" that KCSR attempts to raise cannot serve as a basis to stop the full implementation of the Lake Charles Condition, now that BNSF needs to serve shippers by direct service in order to effectively compete on the Rosebluff Industrial Lead.²

² As BNSF noted in its Opening Statement, "to the extent that there is any interference with UP's operations, the Board recognized in Decision No. 95 (served March 4, 2002), that BNSF's trackage rights operations would, 'by definition, potentially interfere with UP's operations on the trackage rights lines and UP agreed to this potential interference when it

If an operational issue arises related to a particular BNSF direct service, the issue should not be resolved by denying BNSF direct access, but by all three carriers working cooperatively to accommodate BNSF's operations. Any operational accommodation or additional service introduced pursuant to the Lake Charles Condition should not be construed as "interference" that would justify denying BNSF's application for terminal trackage rights.

That said, BNSF explained in its Response to KCSR Interrogatory No. 1 that BNSF service "would effectively replace UP service for BNSF's reciprocal switch cars, and BNSF plans to hold its cars in the Lacassine Yard until UP gives BNSF a window to operate." BNSF January 28 Response at 6. BNSF clarified in its February 20 Letter that "BNSF direct service would not cause substantial (if any) interference with KCSR's operations." February 20 Letter at 2.

In its First Reply, BNSF stated:

the facts here are that BNSF's proposed terminal trackage rights operations on the Rosebluff Industrial Lead will not affect KCSR operations. BNSF's operations would effectively replace UP's deliveries and pickups of BNSF reciprocally-switched cars at the CITGO facility, and thus the situation at the facility would not be materially different than it is today. Moreover, as noted in BNSF's Opening Statement at 19, BNSF would hold its cars in BNSF's Lacassine Yard until UP gives BNSF a clear operating window, thereby eliminating any risk of interference at the Rosebluff Yard or on the Lead itself.

BNSF First Reply at 6-7. BNSF also noted in its First Reply that Rollin D. Bredenberg, BNSF's Vice President of Capacity Planning and Operations Research, testified that "BNSF's direct train service, which would, under the UP proposed operating plan, occur during a two hour window provided by UP during UP's 12-hour operating period, will not cause substantial interference with KCSR's operations." *Id.* at 7 (citing V.S. Bredenberg at 7-8). Put simply, any BNSF direct

accepted the conditions, including the terms of the BNSF Agreement, that we imposed when we approved the UP/SP merger." Opening Statement at 20, note 7 (quoting Decision No. 95, slip op. at 4.)

train service under the terminal trackage rights requested here would reduce the number and frequency of these UP trains, essentially creating a zero-sum game.

KCSR may not like BNSF's answer, but BNSF has fully and adequately answered the KCSR request that BNSF explain why the speculative operational issue raised by KCSR would not interfere with KCSR's operations. The Board should deny the KCSR Motion with respect to Interrogatory No. 1.

2. KCSR Document Request No. 5

KCSR requested in Document Request No. 5 that BNSF produce documents "relating to any rail operational impacts that may occur at any non-CITGO Lake Charles area Shipper facility if BNSF provides direct rail service to CITGO's Lake Charles facility."

As a threshold matter, to the extent that KCSR Document Request No. 5 seeks information relating to "rail operational impacts" that would occur to any trackage that is not a part of the Rosebluff Industrial Lead (the trackage at issue in this proceeding), any such information would "not be able to affect the outcome" of this proceeding and therefore is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence, and KCSR is not entitled to discovery of those documents under the Board's rules. *Waterloo*, slip op. at 2.

As to the Rosebluff Industrial Lead, BNSF conducted a thorough and comprehensive search for documents relevant to the operational interference issue, and BNSF produced a number of these documents in response to UP's First Set of Discovery Requests to BNSF. As BNSF stated in its January 28 Response, and without waiving its objections set forth in the January 28 Response, those already-produced documents are equally responsive to many of the KCSR Second Discovery Requests, including Document Request No. 5. BNSF January 28

Response at 10. Furthermore, as established in Section II.B.1 above, BNSF's Opening Statement at 10-11, and V.S. Bredenberg at 8, any BNSF direct rail service to CITGO's facility would have no material "rail operational impact" to any other non-CITGO shipper on the Rosebluff Industrial Lead because UP will provide BNSF a clear operating window to serve CITGO and BNSF's trains will immediately and completely pull into the CITGO facility, avoiding any interference on the Rosebluff Industrial Lead.

BNSF has fully and adequately responded to KCSR Document Request No. 5. The Board should therefore deny the KCSR Motion with respect to this request.

3. KCSR Document Request Nos. 1 and 8

Through Document Request Nos. 1 and 8, KCSR asked BNSF to produce documents relating to BNSF's operational capabilities of providing existing or future service to CITGO, and documents relating to the quality of BNSF's prior or existing service to CITGO.

Without waiving its objections set forth in the January 28 Response, the documents that BNSF has already produced include a number of documents that are responsive and relevant to KCSR Document Request Nos. 1 and 8. In response to the KCSR Motion, and as noted in the BNSF February 20 Letter at 2, BNSF conducted a further search and identified certain additional documents that are responsive to Document Request Nos. 1 and 8, which BNSF will produce. With that production, BNSF will have fully and adequately responded to these requests. The Board should therefore deny the KCSR Motion with respect to these requests.

C. Lacassine Yard

Through Document Request No. 3, KCSR requests that BNSF produce documents relating to BNSF's new Lacassine Yard, including plans to serve Lake Charles area shippers via the yard. As BNSF stated in its January 28 Response at 9 (and as KCSR acknowledged in its

Motion at 11), BNSF has already produced a number of documents responsive to KCSR Document Request No. 3. In its February 20 Letter, BNSF agreed to provide a further response if KCSR clarifies the scope of this request. As of the date of this filing, KCSR has not provided any such clarification. Without waiving its objections in its January 28 Response, BNSF has demonstrated that it fully intends to produce documents that are responsive to this KCSR request once clarified, and the Board should therefore deny the KCSR Motion with respect to KCSR Document Request No. 3.

D. Shippers Other Than CITGO

1. KCSR Interrogatory No. 2

Through Interrogatory No. 2, KCSR asks BNSF to state whether it would only serve CITGO and no other shippers “located on, or connecting to,” the Rosebluff Industrial Lead and, if not, to “list all other shippers BNSF would attempt to serve” if the Board imposes the terminal trackage rights requested here. In its Response, BNSF stated:

at this time BNSF identifies CITGO as the only shipper that it will initially serve using the proposed terminal trackage rights. Upon approval of the proposed terminal trackage rights, BNSF anticipates that additional shippers will request BNSF service using the proposed terminal trackage rights. BNSF cannot speculate as to which other shippers it may seek to serve with these rights.

January 28 Response at 6-7.

To clarify and expand on this response, BNSF further states that, as reflected in the documents already produced by BNSF and without waiving the objections set forth in its Response, BNSF has discussed potential service on the Rosebluff Industrial Lead with several shippers. BNSF has executed agreements with one such shipper, pursuant to which BNSF will provide reciprocal switch service and may eventually provide direct service either in the event that its application in this proceeding is granted or the impediments, if any, to such service are removed by means of a statutory override of any pertinent agreements under former 49 U.S.C. §

11341(a) (now 49 U.S.C. § 11321(a)), as contemplated by the Board. *See* Decision No. 63, slip op. at 10. BNSF intends to fulfill its common carrier obligations as to other shippers requesting service on the Rosebluff Industrial Lead.

2. KCSR Document Request No. 4

In Document Request No. 4, KCSR asked BNSF to produce documents relating to BNSF's plans to serve "any other Lake Charles area Shipper in the event that BNSF is able to directly operate over the Rosebluff Industrial Lead to serve CITGO's Lake Charles facility."

As established above in Section II.B.2, to the extent that KCSR Document Request No. 4 seeks information relating to shippers not located on the Rosebluff Industrial Lead, any such information would not "be able to affect the outcome" of this proceeding and therefore is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence, and KCSR is not entitled to discovery of those documents under the Board's rules. *Waterloo*, slip op. at 2. BNSF service to shippers using trackage other than the Rosebluff Industrial Lead would not affect any BNSF service to shippers on the Lead.

KCSR Document Request No. 4 also requests certain relevant information as to shippers, namely the information that relates to shippers that BNSF may serve on the Rosebluff Industrial Lead if the Board imposes the terminal trackage rights sought here. The documents that BNSF has already produced and will produce include a number of documents that are responsive and relevant to KCSR Document Request No. 4. In response to the KCSR Motion, BNSF conducted a further search and identified certain additional documents that are responsive to Document Request No. 4, which BNSF will produce. With that production, BNSF will have fully and adequately responded to this KCSR request. The Board should therefore deny KCSR's motion with respect to KCSR Document Request No. 4.

E. Completeness of BNSF Documents

KCSR alleges in its Motion at 19-20 that certain of the documents BNSF has produced are “incomplete,” and requests the Board to order BNSF to “provide the documents that appear to be missing.” In its February 20 Letter at 1, BNSF explained that it “has located and will produce the attachments” to certain documents, which BNSF produced on February 20. BNSF further explained that BNSF had already produced the remaining requested documents as attachments to other related documents. Therefore, the Board should deny the KCSR Motion with respect to the “incomplete” documents.

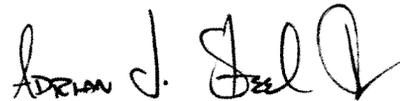
F. Redactions

Through its Motion at 11 and 20, KCSR asked the Board to order BNSF to “unredact” certain of documents produced by BNSF. BNSF reviewed these documents and noted in its February 20 Letter that it “removed the redactions on three documents and will produce those in an unredacted form,” and that BNSF included a chart “which explains the basis for the remaining redactions.” BNSF February 20 Letter at 1. As explained in the chart, BNSF properly redacted certain portions of the documents that contained “irrelevant commercially sensitive information.” This information is irrelevant and excluded from the scope of BNSF documents that KCSR may request through discovery because the information would not “be able to affect the outcome” of this proceeding. *Waterloo*, slip op. at 2. Furthermore, BNSF properly redacted certain portions of the documents that contained privileged attorney-client communications, which the parties have agreed lies outside the scope of documents that any party must produce in this proceeding. Therefore, the Board should deny KCSR’s request to order BNSF to “unredact” certain documents.

III. Conclusion

For the reasons stated above, BNSF respectfully requests that the Board deny the KCSR Motion to Compel.

Respectfully submitted,



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Dated: February 26, 2015

EXHIBIT A

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February 20, 2015

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

Dear Bill :

I am writing this letter in response to KCSR's Motion to Compel Responses to KCSR's Second Set of Discovery Requests Directed to BNSF Railway served on February 6, 2015. BNSF is reviewing the Motion and will reply on or before the due date, February 26, 2015. I am writing this letter to address in the interim several of the matters raised in the Motion in an effort to see if we can reach a resolution as to those matters.

First, KCSR has expressed concern that BNSF's production of documents was incomplete in certain respects as set forth in the chart on pages 19-20 of the Motion. BNSF has located and will produce the attachments to the documents listed in rows 2-3 and 12-20 of the chart. As to the document listed in row 1, BNSF-C-000043 should have been marked as privileged and attorney work product since Mr. Bigoness was providing comments at the request of BNSF in-house attorney Courtney Estes who was also a recipient of the e-mail to which the annotated UP letter was attached. The letter was inadvertently produced. A copy of the e-mail from Chris Bigoness of BNSF transmitting the annotated letter will be produced. BNSF is waiving privilege as to Mr. Bigoness's e-mail and the annotated letter, but it is not thereby waiving and does not intend to waive any privilege as to any other documents or information. Additional documents relating to Mr. Bigoness's e-mail are also being produced, with portions relating to legally privileged material to or from Ms. Estes redacted. A chart responding to each item you have listed in your chart is attached.

Second, KCSR has questioned certain redactions to documents that were made. We have removed the redactions on three documents and will produce those in an unredacted form, and we have attached a chart which explains the basis for the remaining redactions.

Third, we have the following comments with respect to specific interrogatories and documents requests cited in your Motion regarding which are not addressed above:

William A. Mullins
February 20, 2015
Page 2

- a. Interrogatory No. 1: In its response to this interrogatory, BNSF set forth in full its position as to why there would be no interference with KCSR's operations as described in the hypothetical scenario posed. BNSF stated that it would operate only once UP gave it a clear window and that BNSF direct service to the CITGO facility would effectively replace the UP reciprocal switch service now being performed for BNSF traffic. Rollin Bredenberg confirmed in his Verified Statement to which BNSF referred that BNSF's direct train service would, under the UP proposed operating plan, occur during a two hour window provided by UP during UP's 12-hour operating period (see V.S. Bredenberg at 7). Thus, BNSF direct service would not cause substantial (if any) interference with KCSR's operations.
- b. Document Request Nos.1 and 8: BNSF has produced the non-privileged documents that it could identify that are responsive to these document requests. We are checking again to see if additional non-privileged documents can be located, and, if so, we will produce them.
- c. Document Request No. 3: If you will please identify the specific information that you need concerning the Lacassine Yard -- in your words, the "capacity and service structure" and "operating structure and plans" for the yard -- and explain what you mean by the terms that you have used, BNSF will respond further.

Please let me know if you have any questions or would like to discuss. Thank you.

Sincerely yours,



Adrian L. Steel, Jr.

Attachments

cc: Crystal M. Zorbaugh
Michael L. Rosenthal
Edward D. Greenberg
David K. Monroe

BNSF Document Production Chart in Response to KCSR Second Motion to Compel

Documents KCSR Listed as Incomplete

FD-32760 (Sub-No. 46)

-TERMINAL TRACKAGE RIGHTS-

KANSAS CITY SOUTHERN RAILROAD COMPANY AND UNION PACIFIC RAILROAD COMPANY

| BNSF Bates Number | Documents Missing According to KCSR | Status |
|---------------------|--|--|
| 1 BNSF-C-000043 | Need response to questions posed in BNSF-C-000043-BNSF-C000044 and identity of individual asking questions | The UP letter was annotated by Chris Bigness. See BNSF-HC-000670-671; BNSF-HC-000681-682; BNSF-HC-000679-680; BNSF-HC-000674-675; BNSF-HC-000676-678; BNSF-HC-000672-673 |
| 2 BNSF-C-000102 | Need Attachment (Citgo Pipeline Report) Spreadsheet | See BNSF-HC-000102A ¹ |
| 3 BNSF-C-000210 | Need Attachment | See BNSF-HC-000210A-211A; BNSF-HC-000210B-214B ² |
| 4 BNSF-C-000259 | May 27, 2014 E-mail to Becky Murchison - Capacity Questions Summary to improvements made track and unloading operation for last year --- Tally of Cars Interchanged (Partial Answer Provided in BNSF-HC-000583 but e-mail noted additional answers anticipated). | See BNSF-HC-000259 RESP 1-2 ³ |
| 5 BNSF-HC-000064 | 12/19/12 E-mail --- Answer to question posed | See BNSF-HC-000065 |
| 6 BNSF-HC-000066 | 12/19/12 Answers / plan to questions | See BNSF-HC-000693-694; BNSF-HC-000691-692; BNSF-HC-000690; BNSF-HC-000688-689; BNSF-HC-000686-687 |
| 7 BNSF-HC-000086 | Need answer to 04/30/13 M.S. Question | See BNSF-HC-000086 RESP 1-50 |

¹ "A" at the end of a Bates Number signifies that a document is an attachment to the original document which KCSR objected to in the first column, e.g., BNSF-HC-000210A-211A is an attachment to BNSF-C-000210 document listed in the third row.

² "B" at the end of a Bates Number signifies that a document is an additional attachment to the original document which KCSR objected to in the first column, e.g., BNSF-HC-000210B-214B is an attachment to BNSF-C-000210 document listed in the third row.

³ "RESP" at the end of a Bates Number signifies that a document is responsive to the original document which KCSR objected to in the first column, e.g., BNSF-HC-000259 RESP 1-2 is a separate document that contains responsive information to BNSF-C-000259 in the fourth row.

BNSF Document Production Chart in Response to KCSR Second Motion to Compel

Documents KCSR Listed as Incomplete

FD-32760 (Sub-No. 46)

-TERMINAL TRACKAGE RIGHTS-

KANSAS CITY SOUTHERN RAILROAD COMPANY AND UNION PACIFIC RAILROAD COMPANY

| | | | |
|-----------|-------------------------------------|---|---|
| 8 | BNSF-HC-000141 | Need answer to D.S. question | See BNSF-HC-000683-685; See also BNSF-C-000046 as produced January 16, 2015 |
| 9 | BNSF-HC-000146 | (2/20/14 - e-mail) Need answer to question | See BNSF-HC-000146 RESP 1 |
| 10 | BNSF-HC-000197 to BNSF-HC-000207 | Need documents that are missing in between Tabs | See BNSF-HC-000407-000480 as produced January 16, 2015 |
| 11 | BNSF-HC-000216 to BNSF-HC-000217 | Need answer to questions posed on 2/21/12 and 2/24/12 | See BNSF-HC-000407-000480 as produced January 16, 2015 |
| 12 | BNSF-HC-000223 to BNSF-HC-000225 | Need PowerPoint attachment (BNSF-HC-000223) | See BNSF-HC-000223A-224A; BNSF-HC-000225A-227A; BNSF-HC-000225B-230B |
| 13 | BNSF-HC-000227 | Need Attachments (Lake Charles MOU and ITA) | See BNSF-HC-000227A-240A; BNSF-HC-000227B-230B |
| 14 | BNSF-HC-000260 | Missing attachments | See BNSF-HC-000260A; BNSF-HC-000260B-265B |
| 15 | BNSF-HC-000266 | NBR - missing attachment | See BNSF-HC-000266A |
| 16 | BNSF-HC-000487 | Missing PowerPoint attachment (BNSF-HC-000487) | See BNSF-HC-000487A |
| 17 | BNSF-HC-000490 | Missing meeting notes and PowerPoint attachment (BNSF-HC000490) | See BNSF-HC-000800A-911A; BNSF-HC-000900B-498B |
| 18 | BNSF-HC-000508 | Missing PowerPoint attachment (BNSF-HC-000508) | See BNSF-HC-000508A |
| 19 | BNSF-HC-000525 | Missing meeting notes and PowerPoint attachment (BNSF-HC000525) | See BNSF-HC-000525A-526A; BNSF-HC-000525B-533B |
| 20 | BNSF-HC-000536 | Missing two PDF attachments (BNSF-HC-000536) | See BNSF-HC-000536A; BNSF-HC-000536B |

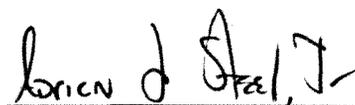
**BNSF Document Production Chart
in Response to KCSR's Second Motion to Compel
FD-32760 (Sub-No. 46)
BNSF RAILWAY COMPANY
-TERMINAL TRACKAGE RIGHTS-
KANSAS CITY SOUTHERN RAILROAD COMPANY AND
UNION PACIFIC RAILROAD COMPANY
REDACTED DOCUMENTS**

| Document | Grounds for Redaction |
|-------------------------------|---|
| BNSF-HC-000007 | Irrelevant commercially sensitive information concerning potential revenue from new business |
| BNSF-HC-000009-BNSF-HC-000011 | See unredacted documents for BNSF-HC000009 - BNSF-HC-000010. BNSF-HC-000011 contains irrelevant commercially sensitive information concerning a market overview |
| BNSF-HC-000052-BNSF-HC-000054 | Irrelevant commercially sensitive information concerning analysis of financial aspects of the new Lacassine Yard (e.g., costs, contribution, and operating savings) and concerning the terms of an existing transportation contract |
| BNSF-HC-000056 | Irrelevant commercially sensitive information concerning costs of the new Lacassine Yard |
| BNSF-HC-000058 | Irrelevant commercially sensitive information concerning the operating savings associated with the new Lacassine Yard |
| BNSF-HC000060-BNSF-HC-000062 | Irrelevant commercially sensitive information concerning potential revenue from new business, existing cost per car mile, traffic contribution, and market share contribution |
| BNSF-HC-000155 | Irrelevant commercially sensitive information concerning potential revenue from new business |
| BNSF-HC-000177 | Irrelevant commercially sensitive information concerning potential revenue from new business |
| BNSF-HC-000400-BNSF-HC-000401 | Irrelevant commercially sensitive information concerning traffic and revenues |
| BNSF-HC-000410-BNSF-HC-000411 | See unredacted document for BNSF-HC000411. BNSF-HC-000410 contains irrelevant commercially sensitive information concerning traffic and revenues and potential revenues from new business |

| | |
|-------------------------------|---|
| BNSF-HC-000426 | Irrelevant commercially sensitive information concerning potential revenues from new business |
| BNSF-HC-000428-BNSF-HC-000430 | Irrelevant commercially sensitive information concerning potential revenue from new business, existing cost per car mile, traffic contribution and market share contribution |
| BNSF-HC-000432 | Irrelevant commercially sensitive information concerning costs of the new Lacassine Yard |
| BNSF-HC-000434 | Irrelevant commercially sensitive information concerning the operating savings associated with the new Lacassine Yard |
| BNSF-HC-000436-BNSF-HC-000438 | Irrelevant commercially sensitive information concerning potential revenue from new business, existing cost per car mile, traffic contribution, and market share contribution |
| BNSF-HC-000485 | Attorney-Client Privileged—Sarah Bailiiff’s transmission of legal advice discussed with in-house BNSF attorneys (Nober, Weicher, Rankin) |
| BNSF-HC-000572 | Attorney-Client Privileged—Sarah Bailiiff set forth legal strategy as provided to her by in-house BNSF attorneys (Weicher, Rankin, Estes) |
| BNSF-HC-000590 | Attorney-Client Privileged—Sarah Bailiiff’s transmission of legal advice discussed with in-house BNSF attorneys (Nober, Weicher, Rankin) |

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2015, copies of the foregoing BNSF's Reply to KCSR's Motion to Compel Responses to Second Discovery Requests Directed to BNSF Railway Company have been served by e-mail on Counsel for UP, KCSR and CITGO, and by first-class U.S. Mail on all parties as listed on the Board's website for the service list in Finance Docket No. 32760 (Sub-No. 46).



Adrian L. Steel, Jr.