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March 19, 2015

BY HAND DELIVERY

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

ENTERED  
Office of Proceedings  
March 19, 2015  
Part of  
Public Record

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:

I am writing on behalf of BNSF Railway Company (“BNSF”) in response to the letter to the Board submitted by counsel for The Kansas City Southern Railway Company (“KCSR”) on March 16, 2015.

Under the pretext of informing the Board about the resolution of certain discovery disputes, KCSR has used the letter as an opportunity to restate, refine, and “renew” its arguments with respect to the three pending KCSR motions to compel in this proceeding, which have each been fully briefed. These improper portions of the KCSR letter constitute a reply to a reply, which is prohibited by the Board’s rules. *See* 49 C.F.R. § 1104.13(c). Instead of moving to strike the KCSR letter and further delaying this proceeding, BNSF urges the Board to now proceed to consider the properly-filed briefs and to resolve the pending KCSR motions to compel so that the proceeding can continue and so that CITGO’s right to direct BNSF train service under the CMA Agreement and the Board’s merger conditions can be realized.

There is one overarching issue that needs confirmation and resolution by the Board – that an analysis of the “competitive effectiveness” of BNSF’s current reciprocal switch service to CITGO and other Rosebluff Industrial Lead shippers is not required in order to decide whether to grant BNSF’s application for terminal trackage rights. KCSR believes that such an analysis is required in order to determine whether the “public interest” standard of 49 U.S.C. § 11102(a) is met by testing whether direct BNSF train service is competitively necessary. BNSF and CITGO submit to the contrary, given that CITGO’s and other Rosebluff Lead shippers’ rights under the CMA Agreement and the merger conditions are absolute and cannot be denied, altered or limited absent a reopening of the merger, with the participation of all potentially affected parties. UP, which has obligations under both its settlement agreements with BNSF and CMA and the merger

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conditions to enable BNSF direct trackage rights service on the Rosebluff Lead, stated in its March 6, 2015 letter to the Board that it disagrees with BNSF's and CITGO's position.

Once the Board resolves this issue, the majority, if not all, of KCSR's expressed concerns about BNSF's and CITGO's discovery responses should be capable of resolution by the parties, and the Board can thereafter establish a new procedural schedule so that the merits of BNSF's application can be addressed.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Adrian L. Steel, Jr.", written in a cursive style.

Adrian L. Steel, Jr.

cc: Edward D. Greenberg, Esq.  
William A. Mullins, Esq.  
Michael L. Rosenthal, Esq.