

# BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS  
2401 PENNSYLVANIA AVENUE, NW  
SUITE 300  
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820  
FACSIMILE: (202) 663-7849

William A. Mullins  
E-Mail: [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com)

Direct Dial: (202) 663-7823

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October 5, 2012

## 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: *Genesee & Wyoming Inc. – Control – RailAmerica, Inc., et al.*,  
STB Docket No. FD 35654

Dear Ms. Brown:

In accordance with the procedures set forth in the Board's September 5, 2012 decision in the above-referenced proceeding, enclosed are the Comments of The Kansas City Southern Railway Company. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com).

Sincerely,



William A. Mullins

Enclosure

cc: Parties of Record  
W. James Wochner

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. FD 35654**

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**GENESEE & WYOMING INC. – CONTROL – RAILAMERICA, INC., ET AL.**

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**COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

**W. James Wochner, Esq.  
THE KANSAS CITY SOUTHERN  
RAILWAY COMPANY  
P.O. Box 219335  
Kansas City, MO 64121-9335  
Telephone: (816) 983-1324  
Facsimile: (816) 983-1227**

**William A. Mullins, Esq.  
Robert A. Wimbish, Esq.  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., N.W.  
Suite 300  
Washington, DC 20037  
Telephone: (202) 663-7823  
Facsimile: (202) 663-7849**

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

**Dated: October 5, 2012**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. FD 35654**

**GENESEE & WYOMING INC. – CONTROL – RAILAMERICA, INC., ET AL.**

**COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

Pursuant to the procedures set forth in the Surface Transportation Board’s (“Board”) September 5, 2012 decision, The Kansas City Southern Railway Company (“KCS”) hereby files these comments in the above-captioned proceeding. KCS is one of seven Class I rail carriers in the U.S., operating approximately 3,500 route miles in a 10-state region, serving the central and south central U.S. KCS files these comments because KCS is concerned that the proposed transaction could result in a loss of its ability to work with the Kiamichi Railroad Company (“KRR”)<sup>1</sup> to provide competing rail service to Union Pacific’s (“UP”) existing rail service at the Southwestern Electric Power Company’s (“SWEPCO”) “Turk Plant.”

The Turk Plant is a 600-megawatt coal-fired base load electric generation plant in Hempstead County, Arkansas and is located on a 2,800-acre tract between Fulton and McNab, Ark. about 15 miles northeast of Texarkana. The Turk Plant is still under construction and will not become fully operational until sometime before the end of the year. At this time, the Turk Plant is currently directly served by the UP.

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<sup>1</sup> KRR is a Class III short-line railroad headquartered in Hugo, Oklahoma. KRR operates two lines totaling 230 miles which intersect in Hugo and operates over 45 miles of trackage rights. KRR interchanges with UP at Durant, OK and at Hope, AR, BNSF at Madill, Oklahoma, KCS at Ashdown, Arkansas, and the De Queen and Eastern Railroad via Texas, Oklahoma and Eastern Railroad at Valliant, Oklahoma. KRR acquired its lines from BNSF’s predecessor in 1987. KRR was acquired by Rail America in 2002.

The Turk Plant could also be served by the KRR if either KRR or SWEPCO were to build an industry connecting track (approximately 2,600 ft) that would connect KRR's tracks with the existing SWEPCO industry tracks. Such a connecting track could be built entirely on existing KRR or SWEPCO property. KRR's track between Ashdown (where it connects with KCS) and the Turk Plant is also in need of rehabilitation – mainly so the track and bridges could handle unit coal trains. If the connecting track and the track rehabilitation were to occur, the Turk Plant would have dual rail service capacity – with the KCS/KRR routing competing against a UP single-line movement.<sup>2</sup> It is this possibility of dual rail service that gives occasion for these comments.

KRR and KCS have engaged in discussions regarding the steps necessary to build and repair KRR's tracks so as to facilitate a KCS/KRR coal move. Prior to UP winning the coal transportation contract, the parties were close to reaching an agreement regarding sharing the costs and responsibilities for completing the physical connection between KRR's tracks and the Turk Plant's industry owned tracks and in rehabilitating the line between Ashdown and the plant. With the purchase of the KRR by the Genesee & Wyoming ("G&W") family of railroads, KCS is concerned that KRR, under new ownership may not continue these negotiations for some legal reason, i.e. the existence of a "paper barrier" or some undisclosed agreement between KRR and any other party or between G&W and any other party. Unfortunately, there is nothing in the current application that provides KCS with comfort that nothing will change with respect to KRR's willingness to work on developing a competitive rail routing to UP.

If there are certain "paper barriers" or "interchange commitments" restricting KRR's ability to interchange with KCS or any "side" or "settlement agreements" with any party that

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<sup>2</sup> Indeed, the fact that the plant could receive rail service from both the UP and the KRR was noted and discussed during the environmental permitting process at the Arkansas Public Service Commission.

would prohibit KRR from working with KCS in the event the transaction is approved, then this Board, SWEPCO, and the public should be given notice of their existence so that their legality and effectiveness could be fully analyzed. Indeed, if KRR were being sold pursuant to the regulations at 49 CFR Part 1150, *et. seq.*, which governs transactions much smaller and less extensive than the instant transaction, these questions would have to be disclosed and discussed. Discussion of paper barriers or undisclosed settlement agreements should not be overlooked simply because the transaction is being handled as a “minor” application rather than under Part 1150.

KCS is hopeful that the proposed transaction will not result in a loss of the substantial progress that has already been made between KRR and KCS in developing a competing rail service to UP’s existing rail service at the Turk Plant. If this transaction could result in such a loss of competition, KCS does not oppose approval of the transaction, but in granting that approval, the Board should take appropriate steps to condition the transaction so as to preserve SWEPCO’s competitive rail routings. KCS looks forward to discussing these issues with the applicants and in obtaining answers to its questions.

Respectfully submitted,



William A. Mullins, Esq.  
Robert A. Wimbish, Esq.  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., N.W.  
Suite 300  
Washington, DC 20037  
Telephone: (202) 663-7823  
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Attorneys for The Kansas City Southern  
Railway Company

October 5, 2012

**CERTIFICATE OF SERVICE**

I have this day served a copy of the foregoing Comments of The Kansas City Southern Railway Company upon all parties of record by U.S. mail in a properly-addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.



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

Dated: October 5, 2012