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BEFORE THE  
SURFACE TRANSPORTATION BOARD

BNSF RAILWAY COMPANY and  
MUSKET CORPORATION,

Petitioners,

v.

UNION PACIFIC RAILROAD COMPANY,

Respondent



Docket No. FD 35740

ENTERED  
Office of Proceedings

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Public Record

REPLY OF UNION PACIFIC RAILROAD COMPANY  
TO PETITION FOR DECLARATORY ORDER

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**REPLY OF UNION PACIFIC RAILROAD COMPANY  
TO PETITION FOR DECLARATORY ORDER**

Union Pacific Railroad Company ("UP") hereby replies to the Petition for Declaratory Order filed by BNSF Railway Company ("BNSF") and Musket Corporation ("Musket") on May 17, 2013. Petitioners assert that UP's performance of a longstanding reciprocal switching operation at Texas International Terminals ("TXIT") in Galveston, Texas, violates various provisions of the Interstate Commerce Act. However, petitioners fail to present any plausible ground for instituting a declaratory order proceeding. The petition should be denied.

The reciprocal switching at issue is not a Board-ordered arrangement or a condition to a merger, and therefore it is not subject to the Board's regulatory authority. Reciprocal switching at TXIT was originally performed by Southern Pacific Transportation Company ("SP"), which served the TXIT facility directly. The TXIT facility was opened to BNSF through a voluntary arrangement with SP before SP's merger with UP. Since the merger, UP has continued to perform the switching, receiving BNSF cars on designated tracks near the TXIT facility – the same tracks SP had used for the switching operation – and delivering them to TXIT

Capacity is tight along the stretch of land adjacent to the Galveston Ship Channel where TXIT is located. Multiple rail lines pass close to the facility. Many customers ship traffic to or from TXIT and other facilities on Galveston Island. TXIT itself has finite capacity to receive and unload cars for the multiple shippers and receivers of the many different commodities that TXIT handles. In response to the recent growth of rail traffic to the facility, UP and TXIT have worked together to expand the facility's capacity and increase its throughput. Most recently, UP leased to TXIT land for the construction of four new storage tracks to facilitate handling of both UP and BNSF cars to and from TXIT's loop tracks, as well as a staging track for trainload traffic delivered by UP. Operations using these improvements were implemented on May 1, 2013

Petitioners' account of the facts surrounding the delivery of cars to and from TXIT is inaccurate and incomplete in material respects. Petitioners barely acknowledge the limitations on physical capacity near and at the TXIT facility, and they say nothing about the complexity of the various transloading operations that occur at TXIT. Nor do they mention how BNSF's own limitations in Galveston have frequently caused delay in the movement of cars into and out of the TXIT facility. They also fail to acknowledge UP's ongoing, successful efforts to accommodate delivery of larger volumes of BNSF traffic to TXIT under the railroads' reciprocal switching arrangement

Moreover, the petition presents no legal basis for declaratory relief. The Board lacks authority to regulate a voluntary reciprocal switching arrangement based on a private agreement between two rail carriers. None of the statutory provisions that UP is alleged to have violated provides a basis for relief. Petitioners do not even argue that UP has behaved inconsistently with the terms of the longstanding switching arrangement with BNSF

The petition's allegations show that what petitioners really want is direct BNSF access to TXIT over UP's lines and other property. Petitioners want BNSF trains with Musket's crude oil to move into the TXIT facility without using the tracks that were historically, and are currently, used for reciprocal switching. However, BNSF lacks a direct physical connection from its lines to TXIT, and it is not entitled to operate over UP's lines or occupy UP's property to serve TXIT directly.

UP has been willing, and it remains willing, to work within the bounds of the existing switching arrangement to accommodate BNSF, and there is more that BNSF could do on its own to improve its service for Musket's traffic to TXIT. On the other hand, Board action could not terminate the present controversy or remove uncertainty because the Board lacks authority to regulate the voluntary switching arrangement at issue and the relief petitioners seek would require ongoing Board oversight of railroad operations at TXIT. Because petitioners fail to identify any legal or factual basis for granting relief, the Board should decline to institute a declaratory order proceeding.

### BACKGROUND<sup>1</sup>

TXIT is a multi-modal, multi-commodity transloading facility located on the Galveston Ship Channel in Galveston, Texas. TXIT uses two loop tracks (which are approximately 86 and 76 car lengths, respectively) to unload rail cars and to load barges and ships and on-site storage tanks and buildings with various liquid and dry commodities. There are many complexities

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<sup>1</sup> Petitioners chose to file a petition for a declaratory order rather than a formal complaint, so UP is not filing a formal answer. However, UP denies petitioners' allegations and characterizations of UP's performance that are not addressed in this reply or to the extent they are inconsistent with the facts set forth in this reply.

The facts set forth in this reply have been verified by James P. Bobbitt, Senior Manager Terminal Operations for UP's Southern Region.

associated with transloading multiple commodities, and TXIT's operations require flexibility and coordination: activities may shift or pause if barges or ships are unavailable, on-site storage facilities are full, or certain commodities must be given higher priority to meet shipping schedules. UP works closely with TXIT to coordinate operations and ensure that loaded railcars are available and empty railcars are pulled promptly, so that TXIT has the operating flexibility it needs to meet the demands of all of its customers.

The TXIT facility is located on the former-SP mainline in Galveston. (A map showing the TXIT facility and the tracks near and at the facility is provided with this reply as Attachment A.) TXIT was opened to BNSF through a voluntary reciprocal switching arrangement between SP and BNSF prior to SP's merger with UP. Since 1996, when the merger was consummated, UP has continued to provide reciprocal switching for BNSF traffic moving to and from TXIT.

UP's reciprocal switching operations at TXIT have always been efficient, and they have recently improved, due in part to TXIT's construction of four new storage tracks on land that UP leased to TXIT. These new TXIT facilities consist of two inbound tracks that together hold a total of 52 cars and two outbound tracks that together hold a total of 52 cars.

UP has designated three UP-owned tracks near the entrance to the TXIT facility for the reciprocal switching operation – the same tracks SP had used when it provided reciprocal switching for BNSF. Together, the three tracks can hold approximately 120 cars.

When BNSF has cars to deliver to TXIT, BNSF moves them from its nearby Valley Yard over a UP-owned connecting track, then over a short segment of UP mainline, to the designated tracks. Contrary to petitioners' allegation that "BNSF crews must break up each of its trainload lot or unit trains" at Valley Yard and "must then deliver each block of cars individually to a small interchange track" (Petition at 3), BNSF can deliver up to 120 cars to the designated tracks.

in a single movement, and it regularly delivers 104-car shipments of crude oil to the tracks in a single trip (though BNSF breaks the train into smaller cuts when it spots the cars on the designated tracks).

After BNSF has delivered its cars to the designated tracks, UP switches them into TXIT's storage tracks. Contrary to petitioners' assertion that UP "chooses to have each block of cars separately delivered by a UP crew to the TXIT facility" (Petition at 3), UP delivers as many cars at one time as TXIT has room to receive on its tracks for inbound cars.

Once UP has delivered loaded BNSF cars to the TXIT inbound tracks, UP pulls any empty BNSF cars that TXIT has placed on its tracks for outbound cars and switches them back to the designated tracks. Contrary to petitioners' allegation that "UP does not retrieve [the unloaded] cars as a group but instead retrieves empty cars in a piecemeal manner" (Petition at 3), UP pulls as many unloaded BNSF cars as TXIT has placed on its outbound tracks, as long as there is room to spot them on the designated tracks. At times, TXIT is unable to accept or process cars due to heavy fog, rain, or lack of barges or storage capacity.

After UP has placed the empty BNSF cars on the designated tracks, a UP crew delivers them to BNSF. Contrary to petitioners' allegation that "BNSF crews separately pick up the cars that are part of the shipment as they are released in a piecemeal manner at UP's yard" (Petition at 3), UP crews move the empty cars back to BNSF's Valley Yard once BNSF informs UP that it is able to accept them there. Often, BNSF is unable to accept empty cars in a timely manner, even though UP is ready, willing, and able to move them back to BNSF's Valley Yard in the limited time window that BNSF provides (as explained below).

Under the current reciprocal switching operation, the only constraints on BNSF's ability to deliver loaded cars to TXIT are: (i) TXIT's capacity to accept and unload inbound cars, and

(ii) BNSF's ability to accept returns of empty cars from UP Keeping the designated switching tracks fluid is dependent upon BNSF's accepting empty cars promptly after UP tenders them.

UP has gone out of its way to help both TXIT and BNSF maximize throughput of the BNSF cars despite these constraints. Although normal operations call for one switch per day into TXIT, UP has consistently provided a second daily switch of BNSF cars when TXIT has requested additional cars This allows 104 BNSF cars to enter TXIT's loop tracks during a 24-hour period, *i e* , two movements of 52 cars (the capacity of the two new inbound storage tracks at the TXIT facility). In addition, UP has, on occasion, allowed BNSF cars to occupy a fourth and fifth UP track when BNSF has claimed it could not accept empty cars without first delivering loaded cars to UP.

In practice, BNSF's Valley Yard has been the chokepoint in the switching operation UP allows BNSF to place loaded cars on the designated tracks at any time, day or night, as long as BNSF contacts UP's local operating personnel to coordinate the operation. By contrast, BNSF has established a single two-hour window each day from 4:00 p.m. to 6:00 p.m during which it allows UP to switch empty cars to BNSF. BNSF personnel frequently tell UP that Valley Yard cannot accept any cars even during that limited window The apparent problem is that BNSF uses Valley Yard as a classification yard for approximately four inbound, four outbound, and two local trains each day, and there is either no room for UP to deliver the empty cars or no room for the empties to sit in BNSF's yard When BNSF cannot accept empty cars from UP, that leaves less room on the designated tracks for BNSF to deliver loaded cars and less room for UP to spot additional outbound empty cars from TXIT.

UP and BNSF have discussed BNSF's interest in altering the existing operations at TXIT. UP and BNSF personnel participated in a joint inspection trip to Galveston this past February

during which UP personnel described the operational changes UP planned to implement when TXIT completed construction of the new inbound and outbound storage tracks on UP's right-of-way. These changes took effect at the beginning of May. UP also explained how physical limitations of TXIT's facilities, including two loop tracks that are, respectively, approximately 86 and 78 cars long, precluded delivery of *either* UP or BNSF trains that could remain intact during unloading. And UP offered to work with BNSF to develop metrics to monitor the reciprocal switching operation at TXIT in order to evaluate whether any additional operational changes were needed following the infrastructure additions at the TXIT facility. BNSF has not accepted UP's offer.

BNSF's communications to UP have reflected no interest in improving reciprocal switching operations. Rather, they have focused on proposals to operate intact trains directly onto TXIT's loop tracks. However, UP cannot even operate its own intact trains onto TXIT's loop tracks. UP trains with cars for TXIT are staged on a track that TXIT constructed on UP property. TXIT breaks up the trains and moves blocks of UP cars to its loop tracks for unloading when TXIT decides that its facility has capacity to accommodate them. More important, BNSF does not have direct access to TXIT. BNSF cannot physically access the TXIT facility directly without crossing and thus blocking a UP mainline or obtaining trackage rights over a UP mainline. Either option would disrupt UP's service to TXIT and other local customers.<sup>2</sup>

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<sup>2</sup> As shown in the attached map, contrary to petitioners' allegations, even if BNSF made available "its own lead track" to hold its trains for TXIT, UP crews could *not* "easily step on the arriving train to deliver it or step off the departing empty train less than one mile from the TXIT facility." (Petition at 7.) This is because the line that connects BNSF's Valley Yard to the UP mainline used to reach the designated switching tracks does not connect to the lead to TXIT's loop tracks.

As for the suggestion that BNSF could "perform the unit train switch service for UP, with BNSF's own crews and locomotives at BNSF's expense" (*id.* at 7), petitioners fail to explain (continued )

In short, contrary to the allegation that UP has refused "to provide or commit to operating protocols" (Petition at 8), BNSF never requested new reciprocal switching protocols. Instead, BNSF has sought direct access to TXIT, it apparently prefers to consume UP's capacity and interfere with UP's service to TXIT, TXIT's customers, and other customers in the Galveston area, rather than adapt its own operations to better accommodate Musket's crude oil trains.

If BNSF were truly interested in improving reciprocal switching operations at TXIT, it would have accepted UP's offer to monitor the impact of TXIT's new loading and unloading tracks on reciprocal switching operations and use that information to evaluate the need for any additional changes to the operations and BNSF's own yard capacity. UP believes the existing operations are highly efficient and could be even more efficient if BNSF improved its ability to receive empty cars at Valley Yard. Nonetheless, UP remains willing to work with BNSF to perform a systematic evaluation of the operations and to discuss ways to improve them.

#### ARGUMENT

The Board has authority to regulate the conditions of reciprocal switching arrangements only if it finds such arrangements are required under 49 U.S.C. § 11102(c) and the competitive access rules. *See* 49 C.F.R. § 1144.2. Petitioners have not alleged that reciprocal switching is required under these provisions because they could not meet the applicable standards of proof.<sup>3</sup> Instead, petitioners invoke statutory provisions that do not apply to the facts in this matter, and

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how BNSF could perform the existing switching operation more efficiently than UP, while avoiding interference with either TXIT or UP operations for other customers.

<sup>3</sup> Section 11102(c) authorizes the Board to require carriers to enter into reciprocal switching agreements under certain conditions. Before imposing such a requirement, the Board must find that a reciprocal switching agreement is "practicable and in the public interest" or "necessary to provide competitive rail service." Here, petitioners have not invoked § 11102, and they do not undertake to allege facts needed to support the requisite findings under this provision and the competitive access rules.

they seek action that is beyond the Board's authority. Accordingly, the Board should not institute a declaratory proceeding

**I. The Board Lacks Authority Over the Reciprocal Switching Arrangement at Issue.**

Petitioners ask the Board to address a dispute regarding reciprocal switching operations conducted pursuant to a voluntary arrangement under which UP switches BNSF cars into and out of TXIT's facility in Galveston. However, the Board lacks authority to regulate such a voluntary arrangement.

Board precedent plainly establishes that the agency lacks authority to regulate voluntary reciprocal switching arrangements. *See, e.g., SP/SSIV Switching Charges on Carloads of Grain at Kansas City*, Docket No. 40178, slip op at 6 (ICC served Oct. 24, 1989) (explaining that the power to prescribe terms for reciprocal switching "only applies to a switching arrangement that we have found is required (either to provide competitive rail service or to otherwise satisfy the public interest)"); *CSX Corp. et al. – Control – Conrail Inc. et al.*, FD 33388, slip op at 3 n 6 (STB served Aug. 24, 1998) ("Our authority to adjudicate the conditions and compensation in reciprocal switching agreements is set forth at 49 U.S.C. 11102(c)."). Accordingly, the Board has no basis for opining on the operation of the current reciprocal switching arrangement, and such an opinion could not provide the basis for the Board to prescribe the operational changes petitioners seek.

**II. The Authority Petitioners Cite Does Not Support Their Request for Declaratory Relief.**

BNSF and Musket allege that UP violates three sections of the Interstate Commerce Act in switching BNSF cars at TXIT. None of these provisions could provide grounds for the declaratory order they seek.

**A. Section 10702(2) Provides No Basis for Relief.**

Petitioners assert that UP's failure to adopt different protocols for switching BNSF cars at TXIT is an unreasonable practice in violation of 49 U.S.C. § 10702(2). However, the Board has ruled that challenges under this provision are inappropriate if a more specific statutory provision governs the legal issue. "Conduct is not appropriately challenged under § 10702 where there is another statutory provision that specifically governs the lawfulness of the conduct in question." *Energy Ark., Inc v Union Pac R.R.*, NOR 42104, slip op at 10 (STB served June 26, 2009). Here, there is a specific provision that governs the switching of cars into shipper facilities. As discussed above, § 11102(c) gives the Board authority to prescribe a reciprocal switching agreement if the standards established by the statute and the competitive access rules are met. In view of this more specific statutory provision (which they do not even cite), petitioners may not rely on the more general terms of § 10702(2) as a basis for their claims. *See, e.g., Joseph A Goddard Realty Co. v. N Y, C. & St L R R*, 229 I.C.C 497, 502 (1938) (shippers could not challenge failure to name them as entitled to receive reciprocal switching as an "unreasonable practice" when they did not invoke a more specific statutory provision allowing the agency, "under certain circumstances, to require one carrier to permit the use of its terminals by another carrier at reasonable compensation").

Furthermore, petitioners cannot factually support a § 10702 claim. UP's conduct cannot be regarded as unreasonable or discriminatory. Rather, UP has continued to perform a longstanding, voluntary reciprocal switching operation. UP has continued to accept BNSF cars on the UP tracks historically used to stage cars for the switching operation, and UP has moved BNSF cars to TXIT consistently with longstanding practice. As the volume of cars to be delivered to TXIT increased in recent years, UP has worked with TXIT to expand the capacity at

TXIT's facility, to improve operational coordination with TXIT, and to increase throughput at the facility – changes that have benefited BNSF

**B. Section 10742 Provides No Basis for Relief.**

Petitioners assert that UP's failure to adopt different protocols for switching BNSF cars at TXIT constitutes a failure to provide "reasonable, proper, and equal interchange facilities" in violation of 49 U.S.C. § 10742. As with their reliance on § 10702(2), petitioners' invocation of § 10742 is an improper attempt to obtain a Board prescription for reciprocal switching without meeting the requirements of § 11102(c) and the competitive access rules.

Moreover, § 10742 is inapplicable here. This provision addresses the "interchange of traffic" with a "connecting line" of another rail carrier, not the sort of reciprocal switching operation that occurs at TXIT. Section 10742's interchange provision applies when two or more carriers are participating in a through route. *See All Coast Line R R v United States*, 284 U.S. 288, 293 (1932) (explaining that the term "connecting lines" refers to "all the lines making up a through route"). A through route involves the use of a through rate – either a joint rate, *i.e.*, a unitary rate provided to the shipper by two or more carriers that agree on how to divide the revenue, or a rate composed of separate factors provided to the shipper by the different railroads. *See Through Routes and Through Rates*, 12 I.C.C. 163, 166-67 (1907); *Metro Ed Co v Consol. Rail Corp.*, 5 I.C.C.2d 385, 402 (1989). A rail carrier providing reciprocal switching is not a participant in a through rate or through route. Rather, it receives a switching fee from the line-haul carrier. *See Switching Charges and Absorption Thereof at Shreveport, La.*, 339 I.C.C. 65, 70 (1971), *see also Missouri-Kansas Texas R.R. – S Pac Transp. Co. – Joint Petition for Declaratory Order – Recovery of Transportation Charges*, Docket No. 37440 (Sub-No. 1), slip op. at 2 (ICC served Nov. 20, 1987) (describing the distinction between switching charges and divisions of joint rates), *S. Ry v Louisville & Nashville R R*, 185 F. Supp. 645, 653 (W.D. Ky

1960) (holding that carrier that switched cars to a shipper's facility for another carrier was "merely the agent" of the other carrier. "not a connecting carrier," and that the cars were not "'interchanged' between the two carriers" within the meaning of what is now § 10742), *aff'd*, 289 F.2d 934 (6th Cir. 1961).

UP does not participate in a through route with regard to Musket's shipments to TXIT. UP is not a party to a through rate – it does not receive a division of a joint rate from BNSF or a separate rate payment from Musket. Rather, UP receives a switching payment from BNSF. Thus, UP's reciprocal switching operation here is not an "interchange of traffic" with "a connecting line" within the meaning of § 10742.

If Musket were to request a through rate and through route from UP and BNSF for its shipments to TXIT, UP would establish an appropriate rate and interchange point. In fact, petitioners acknowledge that UP has facilities where it could interchange the Musket shipments with BNSF at various points, such as Kansas City or St. Louis. (Petition at 6.) But the track BNSF and UP use for the reciprocal switching operation at TXIT is not an interchange point for a through movement, so § 10742 standards do not apply to this situation.

Even if the § 10742 standards applied because reciprocal switching was an interchange of traffic within the meaning § 10742, petitioners could not make a case. UP may designate where it will accept cars in interchange, provided that "it does not impose unusual, unreasonable, or impossible operating hazards [on BNSF] or require [BNSF] to do work which properly belongs to [UP]" *NY, Chi. & St. Louis R R v NY Cent R R.*, 314 I.C.C. 344, 345 (1961) (citing *Kan City S. Ry. v La & Ark Ry.*, 213 I.C.C. 351, 359 (1935)). The designated facilities for switching at TXIT do not impose "unusual, unreasonable, or impossible operating hazards" on BNSF. UP

has continued a longstanding operation using the same tracks that have long been used for this operation.

There is also no basis for petitioners' assertion that UP's reciprocal switching operation has been "discriminatory" or otherwise unequal within the meaning of § 10742. To prevail on a discrimination claim under § 10742, petitioners would have to show that UP treats BNSF differently than it treats *carriers other than UP* for which UP switches traffic for TXIT under substantially similar circumstances. *See, e.g., Burlington N.R.R. v. United States*, 731 F.2d 33, 40 (D.C. Cir. 1984). UP does not provide reciprocal switching for any other carrier's traffic to TXIT.

**C. Section 11101 Provides No Basis for Relief.**

Finally, petitioners assert that UP's failure to adopt different protocols for switching BNSF cars at TXIT constitutes a failure to provide reasonable service on reasonable request in violation of 49 U.S.C. § 11101, *i.e.*, a violation of the common carrier obligation. This claim has no basis in law. UP's statutory obligations under § 11101 are to provide in writing common carrier rates to any person requesting them and to provide rail service pursuant to those rates upon reasonable request. *See Montana v. BNSF Ry.*, NOR 42124, slip op. at 7 (STB served April 26, 2013), *Union Pac. R.R. – Petition for Declaratory Order*, FD 35219, slip op. at 3 (STB served June 11, 2009). Petitioners identify no violation of these obligations. They do not point to any request for rates that UP has rebuffed or any request for service pursuant to UP's common carrier rates that UP has refused.

In other words, even if Musket or BNSF could force UP to perform reciprocal switching for shipments to TXIT merely by invoking § 11101, rather than meeting the standards set forth in

§ 11102(c) and the Board's competitive access rules (which they cannot),<sup>4</sup> UP has not refused to perform switching at TXIT. Any argument that UP is violating its common carrier obligations fails on the facts as well as the law.

**III. Petitioners' Requested Relief Is Inappropriate and Any Board Intervention in Operations at TXIT Would Be Premature.**

There are additional, practical reasons why the Board should decline to exercise its discretion to initiate a declaratory order proceeding in this case. The petition does not request relief that will terminate a controversy or remove uncertainty. Instead, petitioners put forward a vague request that the Board order UP to develop new reciprocal switching protocols, without identifying any legitimate problem with the existing protocols. Petitioners' fundamental complaint is that BNSF lacks the same degree of access to TXIT as UP, but that is because BNSF does not have direct access to TXIT. The reciprocal switching UP provides is highly efficient, especially given BNSF's constrained capacity at Valley Yard.

Moreover, petitioners' request that the Board oversee switching operations at TXIT, through indefinite monitoring of these operations and facilities, is at odds with the rationale for granting a declaratory order to terminate a controversy or remove uncertainty. Monitoring would not be needed if the controversy were truly terminated.

Finally, Board intervention would be premature. As explained above, UP and TXIT have recently worked together to add four new storage tracks at the TXIT facility for use in staging cars for delivery to TXIT. These new tracks went into service and the operations changed to take advantage of those tracks at the beginning of May. UP expects the changes to allow increased

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<sup>4</sup> See, e.g., *Restricted Switching at Butte, Montana*, 355 I.C.C. 73, 78-79 (1977); *Pullman Standard v Chi., Rock Island & Pac. R.R., William M. Gibbons, Trustee*, 356 I.C.C. 606, 613 (1977).

throughput of BNSF cars, as well as UP cars. UP will be monitoring the switching operations over the next six months to evaluate performance now that the tracks are in place. There is no reason for the Board to devote time and resources to developing a factual record and grappling with legal issues when the operations at issue are evolving in a way that could moot petitioners' arguments, at least in part.

If the Board nevertheless determines that it should initiate a declaratory order proceeding, it should order the parties to negotiate a procedural schedule that affords time to investigate the relevant facts, including facts regarding petitioners' discrimination claims and regarding current capacity constraints in the vicinity of TXIT's facility. In addition, because the proceeding will likely be fact-intensive, the Board should consider (a) ordering the parties to develop a set of stipulated facts and identify controverted facts in order to reduce the number of disputes, and (b) ordering petitioners to provide a detailed description of the reciprocal switching protocols that would satisfy them.

**CONCLUSION**

For the foregoing reasons, the Board should deny the petition for declaratory order.

Respectfully submitted,

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June 6, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of June 2013, I caused a copy of the foregoing Reply of Union Pacific Railroad Company to Petition for Declaratory Order to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery. on

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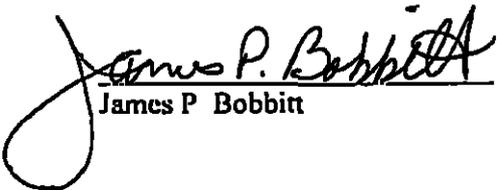
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Michael L. Rosenthal

**VERIFICATION**

I, James P Bobbitt, Senior Manager Terminal Operations for Union Pacific Railroad Company's Southern Region, declare under penalty of perjury that I have read the foregoing Reply of Union Pacific Railroad Company to Petition for Declaratory Order and that the facts and information set forth therein are true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on June 6, 2013

  
James P Bobbitt

**ATTACHMENT A**

# Texas International Terminals (TXIT)

Galveston, Texas

- Legend:
- UP track
  - TXIT new trackage on UP property
  - TXIT trackage on TXIT property
  - BNSF track
  - UP to BNSF connection (UP property)

