

**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**

**CITGO PETROLEUM CORPORATION'S FINAL BRIEF IN SUPPORT OF BNSF
RAILWAY COMPANY'S APPLICATION FOR TERMINAL TRACKAGE RIGHTS**

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Pursuant to the Board's Order dated November 30, 2015, Intervenor CITGO Petroleum Corporation ("CITGO") hereby submits its Final Brief in support of the Application for Terminal Trackage Rights ("Application") filed by BNSF Railway Company ("BNSF") in this proceeding.

I. INTRODUCTION

In Decision No. 44 in the UP/SP merger proceeding, the Board conditioned its approval of the UP/SP merger on the requirement that BNSF be granted direct access to shippers in the Lake Charles area in order to provide effective competition to the combined UP/SP (hereinafter, the "Lake Charles Condition").¹ The Lake Charles Condition is based on the application of the CMA Agreement, as modified and expanded by the Board in Decision No. 44. *See* Decision No. 44 at 246-247, 419. In Decision No. 63, the Board rejected KCS's request that the Lake Charles Condition be reconsidered and made clear that it requires that BNSF have direct access to Lake Charles shippers.²

¹ *See Union Pacific Corporation et al. – Merger – Southern Pacific Rail Corporation et al.* ("UP/SP"), Finance Docket No. 32760, Decision No. 44, 1 STB 233, 427-429 (August 12, 1996)(hereinafter, "Decision No. 44").

² *See* Finance Docket No. 32760, Decision No. 63, slip op. at 8-9 (served December 4, 1996)(hereinafter, "Decision No. 63").

In the past, the manifest rail service to CITGO's refinery provided by UP, KCS and BNSF via reciprocal switched service generally has been adequate to meet CITGO's needs. However, recent changes in domestic crude oil production require that CITGO be able to receive substantial volumes of crude oil via rail in order to realize the benefits of cheaper domestic crude and effectively compete in the marketplace for refined petroleum products. The limited, inefficient, and irregular manifest service CITGO now receives is inadequate to meet CITGO's current and future needs. As a result, CITGO requested that BNSF provide direct unit train service to the CITGO Lake Charles Refinery after UP declined to raise its level of service to meet CITGO's needs.

BNSF's Application seeks trackage rights over the Rose Bluff Lead in order to provide regular direct unit train service for crude oil shipments to CITGO's Lake Charles Refinery. BNSF has the right to provide, and CITGO has the right to receive, direct service to the CITGO refinery, pursuant to the Lake Charles Condition granting BNSF direct access to CITGO's refinery on the Rose Bluff Lead.³ As set forth more fully in the filings of BNSF and CITGO in this proceeding, BNSF's Application meets the statutory standard for the grant of terminal trackage rights under 49 U.S.C. § 11102(a) because (1) the Rose Bluff Lead is a terminal trackage area, (2) the proposed BNSF direct unit train service to CITGO's refinery is practicable and will not substantially impair the operations of UP and KCS on the Rose Bluff Lead, and (3) the grant of trackage rights to implement the Lake Charles Condition is in the public interest.

At issue in this proceeding is whether (1) KCS can block the implementation of the Lake Charles Condition by asserting an alleged contractual right to circumscribe UP's use of UP's

³ In Decision No. 44, the Board made clear that Lake Charles shippers were the intended beneficiaries of the Board-imposed merger conditions relating to BNSF access in the Lake Charles area. *See* Decision No. 44 at 247 n. 15 (striking the "no third-party beneficiary" clauses in the BNSF and CMA Agreements and specifically providing that Lake Charles shippers could enforce the terms of those agreements).

50% ownership interest in the Rose Bluff Lead, and (2) whether UP can take advantage of KCS's opposition to the Application to disavow the obligation UP accepted as a condition for the Board's approval of the UP/SP merger, thereby preventing BNSF from providing direct service to CITGO on the Rose Bluff Lead pursuant to the Lake Charles Condition.

II. BNSF'S APPLICATION FOR TERMINAL TRACKAGE RIGHTS TO PROVIDE DIRECT UNIT TRAIN SERVICE TO CITGO'S REFINERY SHOULD BE GRANTED

A. The Board's Lake Charles Condition Grants BNSF Direct Access To Lake Charles Shippers On The Rose Bluff Lead

The Board established the Lake Charles Condition by imposing the terms of the CMA Agreement as a condition of its approval of the UP/SP merger. *See* Decision 44 at 419 (finding the imposition of the provisions of the CMA Agreement necessary to ameliorate competitive harm).⁴ Section 8 of the CMA Agreement requires that BNSF have the same type of access to shippers in the Lake Charles area as it has for "2-to-1" shippers under the BNSF Agreement. *See* CMA Agreement, § 8 (providing that BNSF access to the Lake Charles shippers shall be "on the same basis" as provided for in the BNSF Agreement for "2-to-1" shippers). Sections 5(c) and 5(d) of the BNSF Agreement, in turn, make clear that BNSF access to "2-to-1" shippers shall be direct or via reciprocal switch, at BNSF's option. *See* BNSF Agreement at §§ 5(c) and 5(d).⁵

Moreover, the Board's Decision No. 63 in 1996 – which rejected KCS's request that the Board reconsider and withdraw the Lake Charles Condition – also makes clear that both the Board and KCS understood that BNSF was to receive direct access to Lake Charles shippers under the CMA Agreement and the Lake Charles Condition. *See* Decision No. 63 at 6 ("KCS therefore argues that, if we [the Board] continue to believe that BNSF should be granted direct

⁴ The CMA Agreement is attached as Counsel's Exhibit 3 to UP's Reply, filed on August 24, 2015. The Board expanded the scope of the CMA Agreement by eliminating certain geographic restrictions and a "phantom" haulage charge included in the BNSF Agreement. *See* Decision 44 at 428-429.

⁵ The BNSF Agreement is attached as Counsel's Exhibit 1 to UP's Reply, filed on August 24, 2015.

access to the Lake Charles area, we must require BNSF to file a terminal trackage rights application.”). The Board acknowledged that it continued to believe BNSF should be granted direct access by holding that if BNSF access to the Lake Charles area was blocked after attempts to informally resolve the objections of KCS, BNSF could return to the Board to seek approval of terminal trackage rights under § 11102(a), or if necessary, an override of any contractual terms that purport to give KCS veto power over UP’s grant of trackage rights over the Rose Bluff Lead. *See* Decision No. 63 at 10. The Board’s reference to trackage rights under § 11102(a) -- and not reciprocal switching under § 11102(c) – also confirms that the Board understood the access granted by the Lake Charles Condition to include direct service and not merely service via reciprocal switch. Thus, Decision No. 63 makes clear that the Board understood in 1996 that the access to Lake Charles shippers granted under the CMA Agreement, and embodied in the Lake Charles Condition, included direct access.⁶

UP and KCS studiously ignore the plain language of the CMA Agreement in order to deny that the Lake Charles Condition grants BNSF direct access to Lake Charles shippers.⁷

Relying instead on the BNSF Agreement, UP and KCS argue that BNSF has only an undefined

⁶ UP and KCS appear to conflate the questions of (1) whether the Board granted direct access, and (2) whether the Board granted trackage rights to BNSF, with respect to the Rose Bluff Lead. Both UP and KCS incorrectly assume that because the Board did not issue a formal order imposing trackage rights on the Rose Bluff Lead over the objections of KCS, it must not have intended to grant BNSF direct access to shippers on the Rose Bluff Lead. However, in reaching that erroneous conclusion, UP and KCS ignore the fact that the CMA Agreement granted BNSF the option to serve Lake Charles shippers by reciprocal switch or direct service. Accordingly, the imposition of trackage rights over the Rose Bluff Lead would be necessary only if and when BNSF elected to exercise its right to directly serve shippers on the Rose Bluff Lead. Moreover, in Decision No. 63, the Board made clear that (1) it expected UP, KCS and BNSF to resolve KCS’s objections under its Joint Facilities Agreements in order to allow BNSF to directly serve Lake Charles shippers, and (2) if KCS’s objections could not be resolved through negotiations or arbitration, the Board would entertain a traffic rights application under § 11102(a) and/or consider an override of the Joint Facilities Agreements.

⁷ Although both UP and KCS mention the CMA Agreement in passing, they appear to assume that its provisions were entirely subsumed and replaced by the 2002 Restated and Amended BNSF Agreement between UP and BNSF (but not CMA). *See, e.g.*, UP Rebuttal at 4 (“In sum, CITGO’s Reply does not show that BNSF’s existing access to CITGO fails to satisfy the terms of the BNSF Agreement . . .”). Oddly, in arguing that UP’s interpretation of the rights granted by the CMA Agreement should be given controlling weight, KCS suggests that BNSF was not a party to the CMA Agreement, despite the fact that BNSF is clearly identified as a party in the CMA Agreement itself.

right to “handle” the traffic of Lake Charles shippers. UP and KCS also suggest that BNSF’s current service to CITGO via UP reciprocal switch is sufficient to “handle” CITGO’s traffic, and thus satisfies the Lake Charles Condition. *See* UP Reply at 18-24; KCS Reply at 34-46. However, BNSF’s right to directly serve Lake Charles shippers – and CITGO’s right to receive that competitive service – arises under the CMA Agreement, not the BNSF Agreement.⁸ As noted above, the CMA Agreement clearly provides that BNSF’s access to Lake Charles shippers is to be direct or by reciprocal switch at BNSF’s option.

Consequently, UP’s and KCS’s contention that Section 8(n) of the BNSF Agreement requires that BNSF and CITGO accept the current manifest service via UP reciprocal switch as a substitute for direct service is simply inapplicable to BNSF’s rights under the CMA Agreement. For the same reason, KCS’s assertion that the scope of BNSF’s access to Lake Charles shippers was left undefined under the BNSF Agreement and has been subsequently limited by agreement of UP and BNSF also fails. Similarly, KCS’s assertion that BNSF has no right under the BNSF Agreement to directly serve CITGO on the Rose Bluff Lead – because the Rose Bluff Lead is not listed in the BNSF Agreement – simply misses the point. The BNSF Agreement does not control BNSF’s rights pursuant to the Lake Charles Condition. The Board has never amended the UP/SP merger conditions to eliminate the reference to the CMA Agreement, and the terms of the CMA Agreement accordingly are still in full force and effect.

Finally, UP and KCS argue that BNSF should be denied direct access to CITGO’s Lake Charles Refinery because UP and KCS believe that BNSF can effectively compete for CITGO’s

⁸ The terms of the CMA Agreement were imposed as a condition of approval of the UP/SP merger – separate and apart from the BNSF Agreement. *See* Decision No. 44 at 246-247 (“we are imposing as conditions . . . (b) the terms of the CMA Agreement . . .”). Although BNSF access to Lake Charles shippers under the CMA Agreement is on the same basis as 2-to-1 shippers under the BNSF Agreement, i.e., direct or by reciprocal switch, at BNSF’s option, neither the original BNSF Agreement nor the Restated BNSF Agreement replaced the CMA Agreement or otherwise altered or overrode its requirements.

traffic via UP's reciprocal switch service.⁹ However, the Board imposed the Lake Charles Condition in order to ensure effective rail competition in the Lake Charles area, and in doing so, granted BNSF the right and the obligation to act as a long term effective competitor for the traffic of Lake Charles shippers. In seeking trackage rights to provide direct unit train service that CITGO needs, BNSF is performing the very role the Board envisioned for BNSF when it imposed the Lake Charles Condition – that of an effective competitor. Indeed, reacting to changes in the marketplace to offer better, more efficient and less costly service in order to meet the needs of the customer is the hallmark of an effective competitor.

Although UP and KCS profess to be convinced that BNSF's current service via reciprocal switch provides "sufficient" competition, it is not their role to determine how much competition is sufficient or the quality of service to which CITGO is entitled. The Board granted BNSF access to Lake Charles shippers in order for BNSF to act as an independent, full-fledged competitor. There is nothing in the Lake Charles Condition or the applicable Board decisions to suggest that BNSF's competitive role is to be limited or that each competitive action or response undertaken by BNSF is subject to scrutiny to determine whether it offers "too much" competition. BNSF has offered a service to CITGO that UP and KCS are unwilling or unable to provide. CITGO needs the direct unit train service BNSF is offering to enhance the efficiency of its operations, compete effectively in its industry and realize the benefits of its investments in rail-related infrastructure. The full implementation of the Lake Charles Condition requires that BNSF be granted trackage rights over the Rose Bluff Lead to provide direct unit train service to CITGO's Lake Charles Refinery.

⁹ UP also suggests that CITGO is in a better position to receive competitive rail service than it was before the UP/SP Merger, and apparently concludes that CITGO should consider itself lucky it is able to receive service from BNSF via reciprocal switch. *See* UP Rebuttal at 4.

B. The Board Has Already Determined That BNSF Direct Service To Lake Charles Shippers Is In The Public Interest

BNSF's Application clearly satisfies the public interest requirement of Section 11102(a). The Board has already found in the UP/SP merger proceeding that the public interest in preserving effective rail competition requires that Lake Charles shippers have direct access to BNSF. *See* Decision No. 44 at 427-428; Decision No. 63 at 8-9. Indeed, the Board refused to approve the UP/SP merger unless BNSF was granted the right to serve Lake Charles shippers directly.

Since the Board has already made the determination that the public interest requires that BNSF have direct access to Lake Charles shippers, the grant of trackage rights necessary to allow BNSF to implement the Lake Charles Condition is also in the public interest. A contrary result would render the Lake Charles Condition illusory, and, at the very least, would seem to require a reopening of the UP/SP merger case.

UP and KCS argue that, in ruling on the Application, the Board must ignore its prior determination that the public interest requires that BNSF have direct access to Lake Charles shippers and essentially pretend that it never imposed the Lake Charles Condition. Instead, UP and KCS contend that the Board must apply either the narrow *Midtec* public interest standard applicable to the grant of trackage rights outside the context of a merger, or the "bridge the gap" public interest standard sometimes applied to implement the grant of broader trackage rights in merger cases. *See* UP Reply at 26; KCS Reply at 29-34.¹⁰

However, the *Midtec* standard simply does not apply to the circumstances in this case. The *Midtec* standard is an "exacting" standard for requests to *create* rail competition where none had previously existed. *See* Decision No. 44 at 448. The broader public interest standard in §

¹⁰ The "bridge the gap" standard is used to impose trackage rights over the lines of a non-applicant in order to connect other trackage rights granted in a merger case.

11102(a), as applied to the imposition of competitive conditions in merger cases, is designed to address a completely different set of circumstances – the *preservation* of rail competition that would otherwise be lost as a result of a rail merger.¹¹

The Board has itself recognized this distinction in the course of granting trackage rights in support of merger conditions designed to preserve rail competition. For example, in Decision No. 44, the Board expressly declined to apply the *Midtec* standard to the grant of trackage rights in the context of the UP/SP merger case. *See* Decision No. 44 at 448. In doing so, the Board noted:

Nevertheless, KCS contends that the terminal trackage rights here cannot be considered to be in the public interest as construed in *Midtec Paper Corporation v. CNW et al.*, 3 I.C.C.2d 171 (1986) (*Midtec*). In *Midtec*, the ICC said that it would not grant terminal trackage rights under section 11103 unless they were necessary to remedy or prevent an anticompetitive act by the owning carrier. KCS is arguing that in *Midtec* the ICC replaced the flexible public interest standard of *UP/MP/WP* with a much narrower standard.

Whether the ICC ever applied its relatively exacting *Midtec* precedent in the context of a merger is a matter of some debate. In any event, we believe that it is inappropriate to do so here, and, to the extent that ICC cases suggest otherwise, we specifically overrule them. Instead, we will apply the broad “public interest” standard that is in section 11103(a) itself. Congress gave us broad authority in both the public interest standard in section 11103 and in the public interest standard of section 11343. Thus, we believe that it is appropriate for us to retain the flexibility to use the terminal trackage rights provision to prevent carriers opposing a merger from blocking our ability to craft merger conditions that are clearly in the public interest as the ICC did in the past. [footnotes omitted].

Decision No. 44 at 448-449.

Similarly, UP’s and KCS’s assertion that the “bridge the gap” standard is a narrowly defined exception to the *Midtec* standard that is inapplicable to the BNSF Application is also

¹¹ *See* Decision 44 at 418 (noting that “merger conditions will not be imposed unless the merger produces effects harmful to the public interest (such as a significant loss of competition)”).

without merit.¹² To the contrary, the Board's use of a flexible public interest standard in "bridge the gap" cases merely serves to confirm that the Board has broad authority under § 11102(a) in determining the public interest in order to implement merger conditions and "prevent carriers opposing a merger from blocking [the Board's] ability to craft merger conditions that are clearly in the public interest." *See* Decision No. 44 at 449.

Consequently, the Board's decisions in the UP/SP merger proceeding make clear that the public interest standard applied in granting Lake Charles shippers direct access to BNSF service is the appropriate public interest standard to be applied here. Since the Board has already determined under that standard that the public interest requires that Lake Charles shippers have direct service from BNSF, the "competitive analysis" offered by UP and KCS pursuant to the *Midtec* standard is unnecessary and irrelevant to BNSF's application.

C. BNSF's Proposed Direct Unit Train Service To CITGO's Refinery Is Practicable And Will Not Substantially Impair The Operations Of UP Or KCS Over The Rose Bluff Lead

As set forth in BNSF's filings in this proceeding, the direct unit train service proposed by BNSF is clearly practicable and can be operated without substantially impairing the ability of UP or KCS to operate on the Rose Bluff Lead. As a preliminary matter, the proposed BNSF direct unit train service to CITGO will not substantially impair KCS operations in the Rose Bluff Yard.¹³ Indeed, BNSF's Application makes clear that BNSF's direct service to CITGO would

¹² UP and KCS do not explain why they reject out of hand the relevance of the "bridge the gap" standard to BNSF's Application. The grant of trackage rights over the Rose Bluff Lead in order to implement the Lake Charles Condition, would bridge the gap between BNSF's operating rights over the so-called 50/50 line and the customers in the Rose Bluff Lead to which BNSF was granted direct access pursuant to the Lake Charles Condition.

¹³ As explained below, KCS apparently does not operate on the Rose Bluff Lead except when it provides the same kind of direct unit train service that BNSF is proposing to provide to CITGO.

operate only during UP's window of operations in the Rose Bluff Yard, and thus would have no appreciable impact on KCS's operations.¹⁴

BNSF's Application also indicates that its direct unit train service will be more efficient than the current switched service, since BNSF will assemble the CITGO unit trains in its own yards, thus freeing up capacity in the congested Rose Bluff Yard. Furthermore, the entire BNSF trains will move directly into and out of the CITGO facility as a unit without requiring any use of the Rose Bluff Lead for staging or similar operations.¹⁵ As a result, the direct service proposed by BNSF will *reduce* the potential for current and future congestion at the Rose Bluff Yard and allow for more efficient use of the Rose Bluff Lead by both UP and KCS.

Perhaps more to the point, UP's and KCS's self-serving assertions that direct unit train service is infeasible on the Rose Bluff Lead are belied by their own actions before and during the pendency of BNSF's Application. The record shows that UP was initially willing to work with BNSF to allow BNSF to operate on the Rose Bluff Lead during UP's window of operations until KCS blocked BNSF's access and filed a lawsuit in federal court.¹⁶ Only when KCS presented it with a potential avenue to escape its obligations under the Lake Charles Condition and exclude BNSF from the Rose Bluff Lead did UP suddenly take the position that BNSF's proposed service was infeasible.

¹⁴ The imposition of the Lake Charles Condition was based, in part, on the Board's determination that its implementation would be operationally feasible. *See* Decision No. 44 at 418 (indicating a merger condition will not be imposed unless the condition is operationally feasible.)

¹⁵ UP suggests that it sometimes uses a portion of the turnout track just outside CITGO's property line (but apparently not on the Rose Bluff Lead itself) to switch traffic in and out of the CITGO refinery. However, BNSF has not indicated that it plans to mirror UP's operations at the CITGO facility. The CITGO facility has more than ample track space within the CITGO property line to accommodate the 60-car unit trains BNSF is proposing to bring into the CITGO refinery.

¹⁶ UP now characterizes its actions as a "straw man" proposal merely intended to encourage discussions among UP, KCS and BNSF. *See* UP Reply at 17-18. But if -- as UP suggests -- BNSF has no right to directly serve CITGO and direct service would in any event be infeasible, what would have been the point of having such discussions?

Similarly, KCS's conduct during the pendency of this case strongly suggests that it believes direct unit train service to CITGO is feasible. As noted in CITGO's Reply, KCS advised CITGO in July 2015 that it intended to provide direct service for a block of 30 crude oil tank cars, rather than having them switched into the CITGO facility by UP.¹⁷ See CITGO Reply at 10-11. Thus, KCS has itself apparently determined that the direct unit train service to CITGO's facility proposed by BNSF is indeed practicable.¹⁸

KCS did not end up delivering the 30-car block to CITGO itself, although it apparently has provided direct unit train service to CITGO in the past. See UP Rebuttal Verified Statement of Chappell and Matya at 4 (acknowledging that KCS delivered a train to CITGO in late 2012). CITGO was advised that UP prevailed on KCS to instead to drop off the 30-car block of tank cars at the Rose Bluff Yard. UP ultimately delivered all 30 cars in one block to the CITGO facility. See CITGO Reply at 10-11. In their rebuttal filings, UP and KCS suggest that KCS's failure to carry through with its plan to provide direct service to CITGO demonstrates that the direct service proposed is infeasible. However, neither UP nor KCS offer any explanation why KCS would go to the trouble of surveying the CITGO facility and advising CITGO of its plans to provide direct service if – as UP and KCS now suggest in this proceeding – direct service to CITGO is so obviously infeasible.¹⁹

¹⁷ KCS has the right to provide direct unit train service over the Rose Bluff Lead for blocks of 25 or more cars, despite its private arrangement with UP that otherwise grants UP the right to switch all shipments on the Rose Bluff Lead. See KCS Reply at 22.

¹⁸ Since KCS suggested to CITGO in July 2015 that it could provide direct service for the block of 30 railcars during its own operating window at the Rose Bluff Yard without impacting UP's operations, it seems clear that BNSF could provide a similar service during UP's operating window without impacting KCS's operations in the Rose Bluff Yard.

¹⁹ It does not take much imagination to surmise that KCS's local personnel – who likely best understand the feasibility of direct service to the CITGO refinery – were somehow not informed until the last minute that their determination to provide direct service to CITGO was inconveniently at odds with KCS's litigation position in this case.

D. CITGO Needs The Direct Unit Train Service At The Lake Charles Refinery

The manifest service CITGO currently receives via reciprocal switch is simply not adequate to meet the current and future needs of the Lake Charles Refinery. The efficient and profitable operation of a petroleum refinery requires a reliable and predictable supply of crude oil. Rail service from manifest trains via reciprocal switch has inherent limitations that simply cannot meet CITGO's needs. The artificial restriction on the number of railcars to be delivered imposed by UP and KCS in their Industry Track Agreement with CITGO, practical limitations on the level of switched rail service due to congestion and capacity constraints at the Rose Bluff Yard, and the inherent inefficiencies of switched manifest service as compared to direct unit trains have severely limited the potential benefits of shipping crude oil by rail to the Lake Charles Refinery.

CITGO's existing rail service via reciprocal switch has resulted in persistent and significant under utilization of CITGO's rail infrastructure. For example, utilization of CITGO track capacity during a three-month period in 2014 was less than 30%. *See* CITGO Reply at 17-18. Moreover, the significant number of days when no service was provided, coupled with the limited number of railcars that can be delivered on any day via reciprocal switch, made efficient use of CITGO's rail unloading facility all but impossible.²⁰ *Id.* at 18.

The unreliable and unpredictable rail service at Lake Charles has also required that CITGO limit its purchases of domestic crude oil and has made it difficult for CITGO to take advantage of favorable purchasing opportunities. *Id.* In addition, disruptions and delays in the

²⁰ UP contends that its records show that its service has been better than suggested by CITGO, and that UP's manifest service improved following a mediation conducted by the Board in June 2014. While UP's service has not surprisingly improved since the mediation, the inherent limitations of manifest service via reciprocal switch as compared to direct unit train service continue to render the level of service inadequate to meet CITGO's current and future needs. Even UP admits that the possible level of manifest switched service is severely constrained by capacity limitations at the Rose Bluff Yard. *See* UP Rebuttal at 5, n. 5.

switched rail service at Lake Charles has required CITGO to reroute rail shipments of crude oil and transload them onto barges, at an additional cost of approximately \$1.6 million.²¹ *Id.*

CITGO has requested that BNSF provide direct unit train service to CITGO's crude oil unloading facility in order to increase the volume, efficiency and reliability of its rail service. CITGO expects to obtain a number of benefits from BNSF's direct unit train service. First, direct unit train service by BNSF will allow for the delivery of more railcars on a regular and predictable schedule than the current switched service. Since BNSF will assemble the CITGO unit train at BNSF's nearby Lacassine Yard, BNSF's direct service will not be affected by the congestion and constrained capacity of the Rose Bluff Yard. Second, BNSF's more stable and predictable service will allow CITGO to more efficiently utilize its unloading facilities to maximize the return on its investment in rail infrastructure and enjoy the benefit of increasing its access to lower priced domestic crude oil. Third, more efficient and reliable rail service will allow CITGO greater flexibility both in purchasing crude oil at locations served by BNSF and scheduling deliveries of domestic crude oil by rail. Fourth, since most of the sources from which CITGO purchases domestic crude oil requiring rail transportation originate on BNSF's lines, direct service by BNSF will allow CITGO to obtain the benefits of single line service for the majority of its crude oil rail shipments, including reduced transit times, greater and more efficient utilization of cars, and greater safety and security due to decreased handling and interchange of railcars loaded with crude oil. Finally, obtaining adequate rail service for favorably priced domestic crude oil will allow CITGO's Lake Charles Refinery to more effectively compete in the market for refined petroleum products.

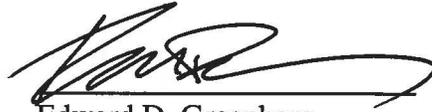
²¹ UP implies that the transloads of rail shipments to barge cited in CITGO's Reply were caused by pump problems at the CITGO facility and not limitations on UP's service. However, that is not the case. CITGO did experience pump problems that required rail cars to be transloaded, but the \$1.6 million in transloading costs cited in CITGO's Reply does not include the cost of transloading due to CITGO's temporary pump problems.

III. CONCLUSION

The Board imposed the Lake Charles Condition in order to preserve rail competition in the Lake Charles area that would otherwise have been lost as a result of the UP/SP merger. In doing, the Board designated BNSF as the rail carrier best positioned to provide effective competition and granted BNSF significant rights – including direct access to Lake Charles shippers – to enable it to carry out its competitive role. BNSF's right to directly service Lake Charles shippers, including CITGO's refinery on the Rose Bluff Lead, is an essential element of the Lake Charles Condition; without it, BNSF cannot effectively fulfill its competitive role.

BNSF is seeking trackage rights over the Rose Bluff Lead pursuant to the Lake Charles Condition in order to provide direct unit train service for crude oil shipments to CITGO's refinery. CITGO is an intended beneficiary of the Lake Charles Condition and has the right to receive the direct unit train service it needs and BNSF is willing to provide. Indeed, the very point of the Lake Charles Condition and the CMA Agreement upon which it was based was to protect shippers like CITGO and ensure the availability of competitive rail service. BNSF's Application for terminal trackage rights over the Rose Bluff Lead should be granted in order to fully implement the Lake Charles Condition and allow BNSF to provide the direct unit train service that CITGO needs.

Respectfully submitted,



Edward D. Greenberg
David K. Monroe
Svetlana Lyubchenko
GKG Law, P.C.
The Foundry Building
1055 Thomas Jefferson Street, NW
Suite 500
Washington, DC 20007
Ph.: 202-342-5277

Charles N. Harper
Senior Corporate Counsel
Refining Ops-LCMC
CITGO Petroleum Corporation
P. O. Box 1562
Lake Charles, LA 70602
Ph.: 337-708-7422

*Counsel for CITGO Petroleum
Corporation*

Dated: December 30, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 2015, copies of the foregoing CITGO Petroleum Company's Final Brief in Support of BNSF Railway Company's Application For Terminal Trackage Rights have been served by email on all parties of record in Finance Docket No. 32760 (Sub-No.46).


Edward D. Greenberg