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May 27, 2011

## 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: STB Ex Parte No. 705  
Competition In The Railroad Industry

Dear Ms. Brown:

In accordance with the procedures set forth in the Notice served on January 11, 2011 and the Decision served on February 4, 2011, both issued in the above-referenced proceeding, enclosed are the "Reply Comments Of The Kansas City Southern Railway Company" to be submitted as part of the record in this proceeding.

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

Enclosures

cc: Warren K. Erdman  
W. James Wochner  
David C. Reeves

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB EX PARTE NO. 705**

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**COMPETITION IN THE RAILROAD INDUSTRY**

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

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

**Dated: May 27, 2011**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB EX PARTE NO. 705**

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**COMPETITION IN THE RAILROAD INDUSTRY**

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

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In its initial comments submitted on April 12, 2011, The Kansas City Southern Railway Company ("KCS" or "Kansas City Southern") set forth its view that the Board's existing regulatory system works for those shippers that use it; that the Board has modified that system repeatedly in recent years to make it more accommodating to shippers to use; and that there is no justification for changing long-standing ICC and Board precedents regarding terminal access, reciprocal switching, and bottleneck pricing. Rather, the Board should allow time for its enhanced rate and service complaint procedures to work, rather than simply discarding these carefully-balanced, statutorily-supported remedies and replacing them with vastly different, untested proposals. Moreover, KCS argued that if the Board were inclined to discard its carefully-developed regulatory procedures and to impose untested new ones, care should be taken not to impose procedures that could disproportionately diminish the competitive vitality of smaller carriers like KCS.

Nothing in the initial round of comments draws into question the validity of KCS's recommendations. The vast majority of the complaints set forth in the initial comments, when boiled down to their essence, are really complaints about rates. To remedy these alleged rate issues, however, these parties propose radical changes to the current regulatory framework, which changes are designed to give a shipper access to more rail carriers. It is claimed that this increased access will result in lower rates and increased competitiveness of domestic manufacturers.

Missing from the arguments that are tendered in support of increased involuntary access is any analysis of why the Board's existing remedies (most of which have only been in place for a few years) are inadequate to resolve the rate and service concerns expressed by the shippers. Also missing is any quantification (or, for that matter, even recognition) of the impact of the proposed changes on rail carriers and the ability of individual carriers to compete.

Over the past few years the STB, in numerous decisions, has responded to shipper complaints regarding rate and service issues. In these decisions the STB has made numerous changes in procedures which have shortened and simplified many proceedings and have significantly increased the ability of shippers to challenge rates and otherwise use the regulatory process to remedy perceived misuses or abuses of market power.

Before considering fundamental changes like those proposed by the shippers that seek broad involuntary access remedies, the existing processes and procedures (including recent changes favorable to shippers), should be allowed to function until it is clear how these changes impact shippers and carriers. If the Board's remedies ultimately prove inadequate, the Board can, at that time, address any deficiencies.

The changes sought by shipper groups advocating various involuntary access regimes simply seek to transfer money from carriers to a particular sub-set of shippers – mainly large chemical and utility companies. The primary result of the changes advocated by these shipper groups would be to significantly reduce the revenue contribution available for carriers to invest in their infrastructure to maintain and expand the capacity of their systems and increase the costs incurred by other shippers who would see no benefit from the proposed regulatory changes. Moreover, the proposed changes would disproportionately impact smaller carriers such as KCS, possibly resulting in fewer - not more - competitive options for shippers.

No shipper or shipper group has presented empirical data demonstrating that fundamental changes are necessary. Similarly no shipper or shipper group has presented credible evidence of the impact of their proposals on the rail industry in general or on particular groups of carriers, such as smaller carriers like KCS. Until such impacts are evaluated, the Board should not put at risk, the tremendous improvements in rail rates and service accomplished in the last thirty years under the current regulatory system.

Respectfully submitted,



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