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November 9, 2012

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E-FILED

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

ENTERED
Office of Proceedings
November 9, 2012
Part of Public Record

Re: Finance Docket No. 35685, Rail Switching Services, Inc. --
Operation Exemption -- Pemiscot County Port Authority

Dear Ms. Brown:

BNSF Railway Company ("BNSF") apologizes for this late filing but feels compelled to respond to the totally false and impertinent allegation that BNSF is serving Marquis Marine Terminal, LLC ("Marquis") "illegally in violation of the ICC Termination Act of 1995", made by counsel for Rail Switching Services, Inc. ("RSS") in the November 9, 2012 filing at page 2.

BNSF is participating in this proceeding only because RSS has questioned BNSF's rights to serve customers on the rail line owned by the Pemiscot County Port Authority ("PCPA"). BNSF continues to be of the view that the Industry Track Agreement fully authorizes BNSF to provide common and contract carrier service over the PCPA line. Nevertheless, the service BNSF currently provides for Marquis is pursuant to a transportation contract. Consequently, no prior approval is required from the Surface Transportation Board



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("Board") since the Board does not regulate contract carrier service.

Sincerely,


Karl Morell

cc: All parties of record