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By Hand

October 23, 2015

Cynthia T. Brown
Chief of the Section of Administration
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Surface Transportation Board
395 E Street, SW
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**Re: Finance Docket No. 32760 (Sub-No 46), BNSF Railway –
Terminal Trackage Rights – The Kansas City Southern
Railway and Union Pacific Railway**

Dear Ms. Brown:

Enclosed for filing in the referenced matter are an original and ten copies of a Public version and an original and ten copies of a Highly Confidential version of Union Pacific Railroad Company's Rebuttal to Citgo's Reply to BNSF's Application and Additional Counsel's Exhibits. I have also enclosed electronic versions on separate CDs.

I have also enclosed one extra paper copy of each version to be date-stamped and returned to our messenger.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Rosenthal".

Michael L. Rosenthal

cc: Parties of Record

REDACTED – TO BE PLACED ON PUBLIC FILE

UP/SP-413

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

**UNION PACIFIC'S REBUTTAL
TO CITGO'S REPLY TO BNSF'S APPLICATION
AND ADDITIONAL COUNSEL'S EXHIBITS**

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October 23, 2015

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–TERMINAL TRACKAGE RIGHTS–
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**UNION PACIFIC'S REBUTTAL
TO CITGO'S REPLY TO BNSF'S APPLICATION**

I. INTRODUCTION

CITGO's reply provides no reason for the Board to grant BNSF's application for terminal trackage rights. CITGO incorrectly argues that the Board previously granted BNSF direct access to Lake Charles area shippers. And, like BNSF, CITGO can provide no support for its fallback position that the Board should modify the UP/SP merger conditions to grant BNSF greater rights than BNSF agreed to accept under the BNSF Settlement Agreement.

Nor does CITGO show that terminal trackage rights over the Rose Bluff Industrial Lead would be practicable or in the public interest. CITGO acknowledges that Rose Bluff Yard and the Rose Bluff Industrial Lead are congested and capacity constrained. And CITGO never claims that BNSF cannot currently compete effectively for its traffic via reciprocal switching. CITGO claims that it would individually benefit from unit train service, but the facts show that such operations would harm other local shippers. The Board should not ignore that broader harm.

In this rebuttal, we first address CITGO's claims regarding merger-related rights to unit train service from BNSF. We then address its claims about the impacts the introduction of such

service would have on other shippers. Finally, we show that Union Pacific's service is efficient, reliable, and more than adequate to meet CITGO's needs.¹

Our rebuttal is supported by a rebuttal verified statement from Jamal W. Chappell and Michael V. Matya, the same witnesses who previously submitted a reply verified statement addressing Union Pacific's operations in the Lake Charles area.

II. CITGO FAILS TO ESTABLISH THAT THE BOARD'S MERGER CONDITIONS ENTITLE IT TO UNIT TRAIN SERVICE FROM BNSF.

CITGO's reply does not establish that it has merger-related rights to BNSF unit train service. Despite asserting that BNSF trackage rights are necessary "in order to preserve effective rail competition that would otherwise have been lost as a result of the proposed UP/SP merger," CITGO Reply at 2, CITGO never claims BNSF is handicapped in competing with Union Pacific for CITGO's traffic. Nor could CITGO credibly make such a claim. Since Union Pacific began delivering crude oil to CITGO, BNSF has been the line haul carrier with the {{ }} share of CITGO's traffic. *See* Union Pacific Reply at 16.² Plainly, BNSF competes effectively for CITGO traffic using the rights it received under the BNSF Settlement Agreement. It is providing the competition contemplated by the agreement and the Board.

CITGO echoes BNSF's arguments that the BNSF Settlement Agreement and the Board's merger decisions give BNSF an unfettered right to serve CITGO using trackage rights over the Rose Bluff Industrial Lead. But Union Pacific has already shown that BNSF is seeking rights that are different from those it agreed to accept in the BNSF Settlement Agreement and those the

¹ This is Union Pacific's only opportunity to address the arguments and evidence submitted by CITGO, as CITGO filed its reply supporting BNSF on the same day that we filed our Reply. CITGO echoes many of BNSF's claims, so where possible, we refer back to material in our Reply, rather than burden the record by repeating our arguments and evidence here.

² Material within double brackets is Highly Confidential, and material within single brackets is Confidential. This material has been redacted from the Public version of this rebuttal.

Board imposed as conditions on the UP/SP merger. For example, CITGO repeatedly echoes BNSF's claim that the Board's decision approving the UP/SP merger granted BNSF "direct" access to Lake Charles area shippers. *See* CITGO Reply at 10, 11, 12, 14, 16 & 17. But as we explained in our Reply, the Board used "direct" to distinguish between BNSF single-line service and KCS-BNSF joint-line service in connection with its decision to require Union Pacific to remove geographic restrictions on BNSF single-line line-haul service to Lake Charles area shippers. The Board did not use "direct" to distinguish between BNSF access using trackage rights and BNSF access using reciprocal switching. *See* Union Pacific Reply at 20-21. CITGO, like BNSF, never addresses the context in which the Board used the term "direct."

In addition, CITGO, like BNSF, makes no attempt to reconcile its claim that the Board granted BNSF terminal trackage rights to serve Lake Charles area shippers in Decision No. 44 as a condition to the UP/SP merger with the Board's statement in Decision No. 63 that BNSF "may return to the Board to seek approval of a terminal trackage rights application" if "BNSF access to the Lake Charles area is blocked." Decision No. 63, slip op. at 9; *see also* Union Pacific Reply at 23-24. And CITGO, like BNSF, fails to acknowledge that the Board never found that terminal trackage rights over the Rose Bluff Industrial Lead were practicable and would not interfere with the owners' use of the facility to handle their own business, as the Board did in authorizing terminal trackage rights over other lines in Decision No. 44. *See* Union Pacific Reply at 24 (citing Decision No. 44, 1 S.T.B. at 447-48). Nothing in CITGO's filing supports BNSF's arguments on these points.³

³ Our Reply also shows that, contrary to CITGO's assertions, *see* CITGO Reply at 12-14, the Board must apply its *Midtec* standard to BNSF's application, and that the application would fail even under the agency's "bridge the gap" precedent, *see* Union Pacific Reply at 25-46.

CITGO is indisputably already in a much better competitive position than before the UP/SP merger. It now has access to three railroads (Union Pacific, BNSF, and KCS) rather than just two (SP and KCS). And, thanks to the Board's condition removing geographic restrictions on BNSF single-line service to Lake Charles area shippers, BNSF provides CITGO single-line line haul service for movements of crude oil, rather than relying on joint-line service with KCS or Union Pacific. Access to BNSF single-line service was a substantial windfall for CITGO. The Board removed the geographic restrictions to address particular needs of plastics shippers, which often send loaded cars to storage-in-transit ("SIT") facilities before the contents are sold and a delivery destination is determined. *See* Decision No. 44, 1 S.T.B. at 428 (explaining that the Board removed the geographic restrictions to "permit BNSF to offer SIT facilities for a full range of destinations, without which shippers might be hesitant to use BNSF services for any shipments requiring SIT").⁴ Crude oil does not move through SIT facilities. CITGO nonetheless obtained the benefits of BNSF single-line service without geographic restrictions, allowing it to receive efficient line haul service for crude oil from a wide range of BNSF origins..

In sum, CITGO's reply does not show that BNSF's existing access to CITGO fails to satisfy the terms of the BNSF Settlement Agreement, the UP/SP merger conditions, or the underlying reasons for the agreement and conditions.

⁴ CITGO also mentions a condition that required Union Pacific to remove what some shippers called a "phantom" haulage charge. *See* CITGO Reply at 16. That charge merely placed BNSF in the same position that Union Pacific had occupied when competing against SP in Westlake by requiring BNSF to pay the equivalent of the haulage fee Union Pacific paid KCS for access to shippers, *See* Decision No. 44, 1 S.T.B. at 428-29. In any event, the haulage charge has no bearing on access to CITGO, which is located in West Lake Charles, not Westlake.

III. THE TRACKAGE RIGHTS BNSF SEEKS WOULD NOT BE PRACTICABLE AND WOULD SUBSTANTIALLY IMPAIR UNION PACIFIC'S AND KCS'S ABILITY TO HANDLE THEIR OWN BUSINESS.

CITGO's reply confirms that rail service to shippers on the Rose Bluff Industrial Lead is affected by "the congestion and constrained capacity" of Rose Bluff Yard. CITGO Reply, Reply Verified Statement of Michael Barrett ("Barrett RVS") at 8. It also establishes that Union Pacific consistently warned CITGO about these constraints and is not applying a double-standard to BNSF's proposed unit trains service. CITGO's witness states that "UP has repeatedly advised CITGO that, at least in part because of the limited capacity of the Rosebluff Yard, it cannot provide direct unit train service for crude oil shipments to the Lake Charles Refinery." *Id.* at 4-5.⁵

CITGO is mistaken, however, when it suggests BNSF could operate unit trains to CITGO without affecting service to other shippers on the Rose Bluff Industrial Lead. *See* Barrett RVS at 9. As Union Pacific showed in its reply to BNSF's application, BNSF's proposed service would immediately, consistently, and substantially interfere with operations in Rose Bluff Yard and on the Lead. *See* Union Pacific Reply at 34-43 & Chappell/Matya RVS at 16-22.⁶ CITGO contends

⁵ As discussed in Part IV, Union Pacific service has been more than adequate to handle CITGO's business. But given our repeated warnings about capacity limitations, CITGO is in no position to complain, after ignoring those warnings, that such limitations have affected the returns on its investments in expanding its own rail infrastructure. *See, e.g.,* Barrett RVS at 5 (complaining about forgone profit opportunities).

In addition, CITGO must have been aware that service to shippers in West Lake Charles would be constrained by the area's physical features (including the location of highways and bodies of water) and the large number of shipper facilities concentrated in this narrow area. Shippers that chose to locate or expand in this area must have appreciated that they could not expect to receive unlimited rail service. As described in our Reply, Union Pacific and KCS have worked hard to maximize capacity and efficiency of rail operations in this constrained and congested location.

⁶ In addition, although CITGO claims that BNSF could pick up empty cars without using tracks outside its facility, *see* Barnett RVS at 4, it does not explain how this would be possible, since it would be storing the empty cars on five separate tracks, *see id.* at 4-5. As explained in our Reply, when we remove empty cars, we pull them from the storage tracks in separate cuts and build (continued...)

that BNSF should be able to deliver unit trains of 60 rail cars because Union Pacific has on occasion delivered 50 or more cars at a time to CITGO. *See* CITGO Reply at 4. But while delivering a large block of cars to CITGO can pose problems, the chief problem with BNSF's proposed unit train service is that CITGO cars currently move on trains that also deliver cars to other shippers. As a result, BNSF's proposed service would not replace any existing trains; instead, BNSF's proposed service would require moving at least one additional train over the Lafayette Subdivision, through Rose Bluff Yard, and down the Lead, delaying several Union Pacific trains, increasing existing congestion, and consuming more of the already scarce capacity. *See* Union Pacific Reply at 39-40 & Chappell/Matya RVS at 22.⁷ Thus, even assuming that CITGO would enjoy some private benefits if BNSF could operate unit trains over a "clear route" from Lacassine Yard over the Lafayette Subdivision, through Rose Bluff Yard, and down the Lead, such a clear route does not exist now and could not be created without greatly impairing Union Pacific's operations and degrading service to every other customer on the Lead. *See* Union Pacific Reply at 34-43 & Chappell/Matya RVS at 16-22.

CITGO also contends that BNSF should be able to operate unit trains to CITGO because KCS recently considered delivering a block of 30 cars directly to the plant using KCS's own yard occupancy window. *See* Barrett RVS at 6-7. But KCS ultimately asked Union Pacific to switch the cars into CITGO because it proved too difficult in the time available to establish a

them into an out-bound block using railroad-owned track on the Lead south of the switch to CITGO's facility. BNSF would have to perform the same operation, occupying the Lead and blocking Union Pacific operations in Zone 2. *See* Chappell/Matya RVS at 15-16 & 21.

⁷ As BNSF's own documents show, if BNSF obtained terminal trackage rights to operate unit trains to CITGO and CITGO also continued receiving cars in manifest quantities from BNSF, BNSF service would require the operation of two additional trains. *See* Union Pacific Reply at 40 n.30. If BNSF obtained terminal trackage rights that were not restricted to serving CITGO, BNSF service could involve the operation of even more incremental trains. *See also id.* at 43-45.

service plan that would not interfere with Union Pacific's existing service to other customers. *See* Chappell/Matya Rebuttal VS at 4-5. Thus, far from supporting BNSF's proposed operations, which call for moving trains through Rose Bluff Yard during Union Pacific's yard occupancy window, the situation highlights the difficulty involved in moving an additional train down the Lead, even during KCS's window, given Union Pacific's around-the-clock operations on the Lead south of the yard. *See* Chappell & Matya RVS at 9-14 & Counsel's Map Exhibit D.⁸ This experience provides no basis for concluding that BNSF could practicably provide unit train service to CITGO, especially during Union Pacific's yard occupancy window.

In sum, CITGO's reply does not show that BNSF's proposed operations using trackage rights would be practicable, would produce public benefits, and would not substantially impair Union Pacific's and KCS's ability to use our facilities to handle business for other shippers. *See* 49 U.S.C. § 11102(a).

IV. CITGO'S DESIRE FOR UNIT TRAIN SERVICE IS NOT A REASON TO GRANT THE APPLICATION, ESPECIALLY SINCE UNION PACIFIC SERVICE TO CITGO IS EFFICIENT, RELIABLE, AND MORE THAN ADEQUATE.

CITGO's desire for unit train service, while understandable, is not a reason to grant BNSF's application. CITGO complains about the inherent characteristics of manifest service (*e.g.*, the need for switching), and it lists anticipated benefits from BNSF unit train service. But Union Pacific provides efficient, reliable manifest service that is designed to meet the needs of our many customers in the Lake Charles area. And while unit train service offers potential benefits for CITGO, these benefits cannot be considered in a vacuum, without regard to the impacts on service to other shippers on the Rose Bluff Industrial Lead. *See* 49 U.S.C. § 11102(a).

⁸ Union Pacific filed a corrected version of Counsel's Map Exhibit D on October 22, 2015.

As we have consistently told CITGO, unit train service could not be implemented without substantially impairing our ability to serve other shippers on the Lead. Thus, even apart from the context of BNSF's application, CITGO would have no right to unit train service at its West Lake Charles facility. As the Board has explained, "the common carrier obligation does not require a carrier to maintain service levels for one shipper that will degrade service overall." *Savannah Port Terminal R.R., Inc.—Petition for Declaratory Order—Certain Rates & Practices as Applied to Capital Cargo, Inc.*, FD 34920, slip op. at 9 (STB served May 30, 2008); *see also DeBruce Grain, Inc. v. Union Pac. R.R.*, 2 S.T.B. 773, 777 (1997) (denying request to "require specifically that DeBruce's shipments be given priority over other shipments").

Moreover, CITGO cannot show that Union Pacific is failing to meet its service needs. CITGO claims that "the congestion and constrained capacity of the Rosebluff Yard and other nearby yards continue to be a significant factor limiting the volume and reliability of rail service via reciprocal switch." Barrett RVS at 8. But the evidence does not support those claims. CITGO attempts to support its claims of poor service by citing exhibits covering the period from April 1, 2014 to June 4, 2014. *See* CITGO Reply, Exs. B & C. However, Union Pacific discussed this period in our Reply and showed that what BNSF claimed were Union Pacific service failures actually reflected problems CITGO experienced with its pumps during a period when hundreds of cars it had ordered were moving into Lake Charles. As a result of its pump problems, CITGO was unable to unload cars at the same pace that loaded cars were arriving in Lake Charles. *See* Union Pacific Reply at 31 & Matya/Chappell RVS at 15.⁹ Despite the fact that {

⁹ Apparently this is the same situation that gave rise to CITGO's complaint about diversions to barge. *Compare* Barrett RVS at 7, *with* Union Pacific Reply, Counsel's Exhibit 25 (BNSF Documents regarding CITGO Pump Issues).

} *see* Union Pacific Reply, Counsel’s

Exhibit 25, CITGO fails even to mention its pump-driven unloading problems in its reply.

CITGO’s Exhibit B documents this confluence of events. This exhibit, which presents totals for “Cars in CITGO” and “Cars in UP Serving Area” on dramatically different scales, shows CITGO had ordered a huge number of cars that arrived just as it experienced pump problems, and that those cars would have overwhelmed CITGO’s claimed storage capacity if some of the incoming crude oil had not been diverted to barge.¹⁰

Moreover, CITGO’s exhibits appear to be inaccurate in at least two important respects. First, Exhibit B indicates that CITGO had no cars in its facility on several days, but CITGO’s data are inconsistent with our data, which show cars at the facility on every day from April 1 through June 4, 2014. *See* Chappell/Matya Rebuttal VS at 3-4 & Counsel’s Exhibits 32 & 33.¹¹ Second, Exhibit C indicates that Union Pacific did not provide any switching on 15 days, but those data are also inconsistent with our data, which show we delivered loaded cars and/or pulled cars that CITGO designated for release on all but three days from April 1 through June 4, 2014. *See* Chappell/Matya Rebuttal VS at 4 & Counsel’s Exhibit 33.¹²

¹⁰ CITGO designed the exhibit so that 100 cars at CITGO appear to be equivalent to 160 cars in the Union Pacific serving area. If the scales were the same, the chart would more clearly show that on many days the number of cars in the serving area dramatically exceeded CITGO’s capacity. Indeed, this can be seen in CITGO’s Exhibit C.

¹¹ {

}

¹² {

(continued...)

In any event, as CITGO acknowledges, Union Pacific implemented a new arrangement for delivering cars to CITGO after the period shown in CITGO's exhibits.¹³ The new arrangement has been in place since June 19, 2014, and in all that time, CITGO has never complained to Union Pacific about not receiving enough cars. *See* Chappell/Matya RVS at 15. Nor could CITGO complain. Since operations under the new arrangement began, Union Pacific has delivered all the cars CITGO ordered with extremely high levels of switching performance. *See* Chappell/Matya Rebuttal VS at 4 & Counsel's Exhibit 35. BNSF also benefits from Union Pacific's high level of service. In fact, BNSF has benefited more than Union Pacific: since June 19, 2014, BNSF's share of the crude oil Union Pacific delivered to CITGO has been approximately {{ }}.¹⁴

In sum, Union Pacific provides excellent service to CITGO. CITGO's desire for unit train service should not trump our legitimate concern for serving all shippers on the Rose Bluff Industrial Lead.

V. CONCLUSION

CITGO's reply does not advance BNSF's terminal trackage rights application. CITGO does not dispute that BNSF competes effectively for its traffic; it does not dispute the capacity constraints affecting Rose Bluff Yard and the rest of the Rose Bluff Industrial Lead; and it does not make a persuasive case against our position that Union Pacific provides high quality service using manifest trains. CITGO might believe it would obtain benefits if BNSF could provide it

}

¹³ In their rebuttal verified statement, Chappell and Matya describe the evolution of CITGO's Industry Track Agreement in order to correct CITGO's apparent misperception that we arbitrarily limited deliveries to CITGO. *See* Chappell/Matya Rebuttal VS at 1-3.

¹⁴ This figure has been verified by Chris Sanford, Union Pacific's Director – Commercial and Interline Strategy. *See* Sanford Rebuttal Verification.

with unit train service using trackage rights over the Lead, but it does not show that BNSF's use of such trackage rights is required under the UP/SP merger conditions or would be "practicable and in the public interest without substantially impairing the ability of" Union Pacific (and KCS) "to use the facilities to handle [their] own business." 49 U.S.C. § 11102(a).

Respectfully submitted,



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October 23, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2015, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760 (Sub-No. 46).



Michael L. Rosenthal

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

REBUTTAL VERIFIED STATEMENT

OF

JAMAL W. CHAPPELL AND MICHAEL V. MATYA

REBUTTAL VERIFIED STATEMENT

OF

JAMAL W. CHAPPELL AND MICHAEL V. MATYA

I. Introduction

Our names are Jamal W. Chappell and Michael V. Matya. We provided our qualifications in our reply verified statement, which was submitted as part of Union Pacific's Reply Statement and Evidence.

We are submitting this statement to discuss three issues relating to CITGO's reply to BNSF's Application. First, we discuss the evolution of CITGO's Industry Track Agreement with Union Pacific and KCS. Second, we discuss the efficiency, reliability, and adequacy of Union Pacific's service to CITGO. Finally, we discuss CITGO's statements regarding KCS's recent interest in delivering a block of 30 cars directly to CITGO.

II. CITGO's Industry Track Agreement

CITGO criticizes Union Pacific and KCS for limiting the number of rail cars that can be delivered to its facility through its Industry Track Agreement ("ITA"). *See* Barrett RVS at 6, 7-8. However, Union Pacific currently places similar limits on all our customers as part of our Customer Inventory Management System ("CIMS"). We develop these limits in consultation with our customers. The limits are usually based on track capacity at the customer's facility, but they are sometimes based on the capacity of other track we use to switch cars into a customer's facility. We use these limits to improve our overall operating performance: we want to prevent customers from ordering more cars than they can handle, so that excess cars do not end up clogging up our yards, interfering with service to other customers.

CITGO's 1948 ITA did not contain a limit on the number of rail cars that could be delivered to its facility, and Union Pacific did not have CIMS in 1948. *See* Counsel's Exhibit 36 (1948 ITA and supplemental agreements). When CITGO expressed interest in receiving crude oil at its West Lake Charles facility in 2012, Union Pacific and KCS used the opportunity to modernize CITGO's ITA. This included adding provisions to address "Inventory Management" and "Capacity." *See* Counsel's Exhibit 13 (2012 ITA and First Amendment). Although CITGO now claims that the 24-car limit in the new ITA was "arbitrary," Barrett RVS at 6, the new ITA, which CITGO signed, explains that the limit reflects "the [then-]current track structure supporting" the facility. Counsel's Exhibit 13.¹

The new ITA also established a process that allowed CITGO to negotiate increases in the volume limit based on "infrastructure improvements" or "demonstrated throughput of railcars at the Facility and/or improved operating procedures." Counsel's Exhibit 13. In November 2012, after CITGO invested in improving its track and unloading capacity, Union Pacific and KCS agreed to amend the ITA to raise the volume limit to 30 cars per day. *See id.*

As CITGO continued investing and arguing that it could receive more cars and manage them without causing congestion, Union Pacific and KCS agreed to amend the ITA again. In June 2014, we agreed to raise the volume limit to 90 cars and began serving CITGO on that basis, which we referred to as a "keep full" method.

As we stated in our reply verified statement, since we implemented the "keep full" method, we have not heard CITGO complain that it is not receiving enough cars. But even before that point, we do not believe the 24-car limit or the 30-car limit prevented CITGO from receiving

¹ CITGO's witness claims the initial limit was 20 cars, *see* Barrett RVS at 7, but the limit was actually 24 cars, *see* Union Pacific Reply, Counsel's Exhibit 13.

enough cars. CITGO's witness is simply wrong when he claims that we "would not deliver loaded rail cars if there were 30 loaded or empty railcars already at the CITGO facility." *See* Barrett RVS at 7. Instead, the 30-car limit addressed the number of cars at the facility after we pulled the empty cars that CITGO had released and we spotted new cars at the facility. In other words, if CITGO had processed and released 30 cars each day, we would have delivered 30 loaded cars each day (assuming we had that many on hand). But CITGO has never consistently released 30 cars per day. In fact, CITGO's own documents show that the facility {
}, just
before we raised the volume limit to 90 cars. *See* Counsel's Exhibit 37 (CITGO Discovery Document CPC-0031-C).

III. Union Pacific Service To CITGO

CITGO complains about the efficiency, reliability, and adequacy of Union Pacific's service, but its only evidence relates to a period from April 1, 2014, through June 4, 2014. *See* CITGO Reply, Exhibits B & C. This is the same period that we discussed in our reply verified statement in response to claims by BNSF witness Bredenberg that Union Pacific was providing poor service to CITGO. As we explained, the issues BNSF raised did not reflect Union Pacific service problems. Instead, during that period, CITGO experienced an equipment malfunction, requiring Union Pacific and BNSF to hold cars in yards until CITGO solved the problem. *See* Chappell/Matya RVS at 14-15. CITGO goes a step further than BNSF, presenting data in its Exhibits B and C to support its criticism of Union Pacific. But the data simply illustrate the problem we described—CITGO had ordered more cars than it could unload at the time due to pump failures.

Moreover, CITGO's data are not consistent with our data in many instances. Specifically, CITGO's Exhibit B appears to show that CITGO had no cars in its facility on several days, but

our CIMS data show that on every day from April 1 through June 4, other than one day for which data are unavailable, CITGO had cars in “AP” status, which means that we had spotted them as loads and CITGO had not released them as empties to be pulled. These CIMS data are provided in Counsel’s Exhibit 32.

In addition, CITGO’s Exhibit C asserts that Union Pacific did not provide service on 15 days from April 1 through June 4, but our “spot and pull” data show that we delivered loaded cars and/or pulled cars that CITGO designated for release on all but three days from April 1 through June 4. Our “spot and pull” records are provided in Counsel’s Exhibit 33.

Finally, whatever disagreements exist about Union Pacific’s service before we adopted our “keep full” method, there should be none about the quality or quantity of our service since June 2014. From July 2014 through August 2015, 98% of the cars we spotted or pulled at CITGO’s facility were switched on time or early according to our service plan. From January 2015 through August 2015, our spot/pull performance was 100%, meaning that 100% of cars were delivered according to plan. Our performance data are provide in Counsel’s Exhibit 35.

IV. KCS’s Efforts To Deliver A Block Of 30 Cars To CITGO

In our reply verified statement, we explained that KCS has a limited contractual right to deliver trains of 25 cars or more directly to CITGO and other shippers in Zone 2, but that the few times KCS wanted to move a train to CITGO, we had great difficulty finding times when KCS could move into and out of the facility without disrupting our operations. *See* Chappell/Matya RVS at 21. To the best of our knowledge, KCS last delivered a train to CITGO late in 2012.

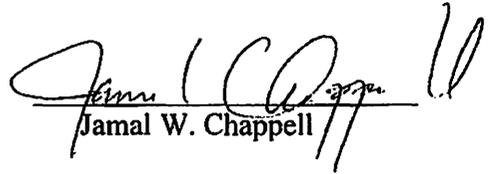
Early in August of 2015, Chappell learned that KCS planned to deliver a block of 30 cars to CITGO.² Chappell learned about KCS's intentions only after the cars had arrived in the Lake Charles area, when KCS asked Union Pacific to designate a time when KCS could move the cars to CITGO. Chappell told KCS that it would be difficult to create a window for KCS on such short notice, even though KCS would have moved the train through Rose Bluff Yard during its own window, and that CITGO could receive the cars more quickly and efficiently by using the established switching procedure. After some back-and-forth discussions, KCS asked Union Pacific to switch the traffic into CITGO, and the cars were delivered promptly.

² As noted in our reply verified statement, Matya changed jobs on August 1, 2015, and he no longer has responsibilities for matters relating to CITGO's facility in West Lake Charles. Accordingly, he is not verifying the portion of this statement describing communications between Union Pacific and KCS relating to this issue.

VERIFICATION

I, Jamal W. Chappell, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Rebuttal Verified Statement.

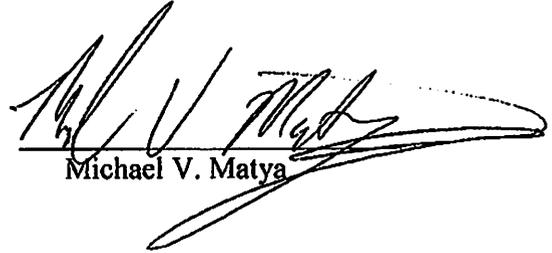
Executed on October 21, 2015.


Jamal W. Chappell

VERIFICATION

I, Michael V. Matya, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Rebuttal Verified Statement.

Executed on October 21, 2015.

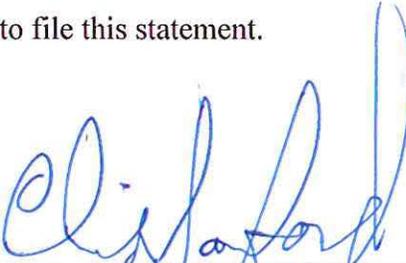


Michael V. Matya

**REBUTTAL VERIFICATION OF
CHRIS SANFORD**

I, Chris Sanford, Director – Commercial and Interline Strategy for Union Pacific Railroad Company, declare under penalty of perjury that I assisted in the preparation of Union Pacific's Rebuttal to CITGO's Reply to BNSF's Application and that the information contained therein regarding BNSF's share of the crude oil that Union Pacific has delivered to CITGO is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on October 22, 2015.



Chris Sanford

Redacted from Public Version

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