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By 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

March 6, 2015

ENTERED
Office of Proceedings
March 6, 2015
Part of
Public Record

**Re: Finance Docket No. 32760 (Sub-No. 46) BNSF Railway
Company – Terminal Trackage Rights – The Kansas City
Southern Railway Company and Union Pacific Railroad
Company**

Dear Ms. Brown:

I am writing on behalf of Union Pacific Railroad Company (“Union Pacific”) to address an important issue raised by the replies of BNSF Railway Company (“BNSF”) and CITGO Petroleum Corporation (“CITGO”) to three pending motions to compel filed by Kansas City Southern Railway Company (“KCSR”).

Union Pacific does not take a position on whether the motions should be granted or denied. However, Union Pacific believes that each party is entitled to be heard on the merits of the issues raised in this proceeding, and that discovery disputes involving a subset of parties should not be used as a device to obtain rulings on critical merits issues.

In this respect, BNSF and CITGO have replied to KCSR’s motions by arguing that the motions should be denied in part because the Board allegedly already has determined that BNSF access to certain shippers using trackage rights is necessary to preserve pre-merger competition and therefore is in the “public interest,” as that term is used in 49 U.S.C. § 11102(a). While BNSF and CITGO have a right to argue about what the Board has already decided, Union Pacific disagrees with BNSF’s and CITGO’s positions, and it intends to provide evidence and legal arguments addressing both what the Board already has and has not determined and the statutory “public interest” test in its reply submission, as contemplated by the procedural schedule governing this proceeding.

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Union Pacific therefore urges the Board not to resolve the pending discovery disputes in a way that prejudices the merits.

Sincerely,



Michael L. Rosenthal

cc: Adrian L. Steel, Jr., Esq.
William A. Mullins, Esq.
Edward D. Greenberg, Esq.