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August 24, 2015

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: 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:

The Kansas City Southern Railway Company (“KCS”) hereby files, via e-filing, its Reply to BNSF Railway Company’s Opening Statement And Evidence, which BNSF filed on December 31, 2015 in the above captioned matter. KCS’s filing consists of two volumes. Volume I contains the legal argument and witness statements. Volume II contains documents cited in Volume I and that were obtained through the discovery process. KCS is filing two versions of Volume I: (1) a “Highly Confidential Version” being filed under seal and subject to the Board’s December 18, 2014 Protective Order issued in this proceeding; and (2) a “Public Version” which redacts all “Confidential” and “Highly Confidential” materials, documents, and references. Volume II contains only Confidential or Highly Confidential material, and therefore there is no “Public Version” of Volume II. If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

cc: Parties of Record

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

REPLY OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

VOLUME I

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August 24, 2015

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CONFIDENTIAL ONLY)**

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

REPLY OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

INTRODUCTION AND PREFACE

BNSF Railway Company (“BNSF”) requests the Surface Transportation Board (“STB” or “Board”) to compel The Kansas City Southern Railway Company (“KCS”) and Union Pacific Railroad Company (“UP”) to grant it terminal trackage rights on the Rosebluff Lead, trackage owned and operated for over a half a century by KCS and UP. BNSF’s request should be denied.

Contrary to BNSF’s assertions, the BNSF Settlement Agreement – filed with and approved by the Board¹ – did not grant BNSF direct trackage rights to serve CITGO or others on the Rosebluff Lead. Neither did the Board’s UP/SP merger decisions grant BNSF such terminal trackage rights. Rather, UP/SP Decision No. 63 explicitly stated that BNSF would have to apply pursuant to 49 U.S.C. §11102(a) if it wanted terminal trackage rights in the Lake Charles Area,²

¹ The UP-BNSF Restated and Amended Settlement Agreement (“BNSF Settlement Agreement”). The BNSF Settlement Agreement can be found on the Board’s website at [http://www.stb.dot.gov/filings/all.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/a287565fa6dcc1eb85256b72006601a7/\\$FILE/204872.pdf](http://www.stb.dot.gov/filings/all.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/a287565fa6dcc1eb85256b72006601a7/$FILE/204872.pdf). The BNSF Settlement Agreement includes, among other things, the CMA Settlement, which first dealt with BNSF access in the Lake Charles area.

² The Lake Charles area consists of three distinct railroad stations: Lake Charles, Westlake, and West Lake Charles (collectively, “Lake Charles Area”). Prior to the UP/SP merger, Lake Charles, east of the Calcasieu River, was served exclusively by UP, but was open through reciprocal switching to SP and KCS. Westlake was served by KCS and SP jointly, but was open

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which it has now done almost two decades later by filing its terminal trackage rights application (herein "Application").

BNSF has not carried its burden of proof under Section 11102(a) for imposition of compelled terminal trackage rights. First, BNSF has not met any of the three well-established public interest standards under Section 11102(a). Second, BNSF has not presented a practicable operating plan or shown that it would not substantially impair KCS's and UP's service to other shippers served by the Rosebluff Lead. At best, BNSF offers a vaguely-described operating plan that mistakes certain facts, attempts to gloss over many important gaps, and otherwise fails to show that BNSF's proposal would not harm UP and KCS service to the many other Rosebluff Lead shippers. BNSF's refusal to offer payment for its use of KCS-owned property is also fatal to the Application. Accordingly, BNSF's Application should be denied.

Likewise, BNSF's request for a contractual override of the joint facility agreements covering the Rosebluff Lead should be denied. The Board has said that in the context of compelled trackage rights in a merger proceeding an override can only be invoked if there are no other regulatory remedies and the override is necessary to implement the transaction. Here, the availability of a terminal trackage rights application process negates the claim that an override is required. Moreover, it cannot reasonably be said that an override is necessary to effectuate the UP/SP merger now, nearly 19 years after the merger occurred, or to provide BNSF access to

to UP through reciprocal switching. Westlake, an incorporated community, sits west of the Calcasieu River and generally north of the 50/50 Line. West Lake Charles was served by KCS and SP, and was not open to reciprocal switching by UP. Generally, West Lake Charles is the area west of the Calcasieu River and south of the 50/50 Line. CITGO, the shipper that is the focus of BNSF's terminal trackage rights application, is located in West Lake Charles. As such, pre-merger, CITGO only had access to two carriers - SP and KCS. By granting BNSF access to West Lake Charles, Decision No. 44 actually expanded CITGO's pre-merger access. The condition granting BNSF access in the Lake Charles Area is referred to as the "Lake Charles Condition."

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Lake Charles shippers when BNSF has been serving those very shippers since shortly after the merger.

SUMMARY OF ARGUMENT

Nearly nineteen years ago, as part of approving the largest railroad merger in U.S. history, STB imposed, as a condition to the merger, an agreement between UP and BNSF – the BNSF Settlement Agreement. Although the BNSF Settlement Agreement granted BNSF access to the Lake Charles Area, direct trackage rights were not prescribed by the Board or included in the BNSF Settlement Agreement. Instead, the BNSF Settlement Agreement stated only that "BNSF shall ... have the right to handle traffic of shippers open to all of UP, SP and KCS at... Rose Bluff."³

In the UP/SP merger, KCS objected to the unprecedented grant to BNSF of any access to shippers located in the Lake Charles Area because the Lake Charles Area was not a 2-to-1 point which BNSF access was intended to remedy.⁴ Moreover, the joint facility contracts that governed operations in the Lake Charles Area did not allow UP to grant BNSF such access without KCS's consent. As a result of KCS's objection under the joint facility agreements, the Board, in Decision No. 63,⁵ while reaffirming the general right of BNSF to serve Lake Charles Area shippers, refused to prescribe terminal trackage rights or to issue a general override of the private contracts governing UP and KCS operations. Instead, the Board told BNSF that if it wanted trackage rights on the joint facility, it should seek those via negotiation or arbitration

³ Rosebluff is in West Lake Charles.

⁴ Indeed, providing BNSF access to the Lake Charles Area actually increased the number of carriers from 2-to-3, perhaps one of the only areas in the entire merger where this occurred.

⁵ See Union Pacific Corp.—Control & Merger—Southern Pacific Rail Corp., FD 32760 (Sub-No. 46), 1996 STB LEXIS 308, (STB served Dec. 4, 1996) ("Decision No. 63"). Board orders referred to herein by "Decision No." are orders issued in STB Finance Docket No. 32760 and sub dockets.

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with UP and KCS, or, if "BNSF access to the Lake Charles area is blocked, BNSF may return to the Board to seek approval of a terminal trackage rights application under new 49 U.S.C.

11102(a); and if and to the extent that application is ultimately denied, an override of the terms of the four joint facility agreements might be necessary under old 49 U.S.C. 11341(a)." Decision No. 63, at *16-*17.

Over the intervening 18+ years between Decision No. 63 and now, BNSF's access has not been blocked, and still isn't. BNSF has served the area with haulage rights or switching rights and without KCS objection. Yet, because it desires to bring unit trains of crude oil directly into the CITGO facility, rather than having them broken up and switched into and out of the facility as KCS, UP, and BNSF trains are today, BNSF has filed its terminal trackage rights Application. It did so without negotiating with KCS for access. It also refused to arbitrate. Instead, in Decision No. 2 issued in this sub-docket, the Board told BNSF that it was entitled to file a terminal trackage rights application because "any rail carrier may file a terminal trackage rights application under 49 U.S.C. § 11102 without permission from the Board" at any time. See FD 32760 (Sub-No. 46), Decision No. 2, n. 8.

Now, even though it has filed under Section 11102(a), BNSF insists that it doesn't have to follow the administratively and judicially approved standards for meeting the public interest element of Section 11102(a) applications because, in BNSF's view, "the 'public interest' component of the terminal trackage rights analysis has already been decided...[i]t is not in issue now."⁶ Likewise, BNSF wants the Board to gloss over the operational impact requirement of the statute because "[a]ny operational accommodation or additional service introduced ... should not

⁶ BNSF's Reply to KCSR's Motion to Compel ("BNSF Reply to 1st Motion") at 5 (Filed February 4, 2015).

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be construed as 'interference'."⁷ In short, the Board's direction that BNSF "seek approval of a terminal trackage rights application under new 49 U.S.C. 11102(a)" and comply with the statutory elements under that statute was, in BNSF's views, a meaningless formality with no legal effect. In BNSF's view, the Application should be automatically granted because it merely seeks to "confirm the trackage rights granted to BNSF over the Rosebluff Industrial Lead." BNSF Opening at 1. BNSF's arguments should be rejected. BNSF should be required to meet the public interest test applicable to other terminal trackage rights applications and show that its operations will not impact service by KCS and UP to other shippers. BNSF has not met these tests.

BNSF's argument that it has already been granted "trackage rights" in Decision No. 44 and the BNSF Settlement Agreement which the Board simply needs to "confirm"⁸ is flatly wrong. Neither UP nor the Board had authority during the UP/SP merger to grant BNSF terminal trackage rights to serve CITGO. UP had no contractual right to grant BNSF such access because the tracks are owned in part by KCS and are governed by private agreements that prevent UP from granting BNSF access without KCS's consent. Likewise, the Board had no legal authority to grant trackage rights at that time because the Board could not have compelled trackage rights over a non-applicant carrier like KCS, absent a terminal trackage rights application, which was not filed.⁹

⁷ See BNSF's Reply to KCSR's Motion to Compel Responses to Second Discovery Requests Directed to BNSF Railway Company ("BNSF Reply to 2nd Motion") (Filed February 26, 2015) at 7.

⁸ "BNSF requests that the [Board] confirm the direct trackage rights granted to BNSF over the Rosebluff Industrial Lead as a condition to the UP/SP merger." See BNSF Railway Company's Opening Statement And Evidence at 11 (Filed December 31, 2014) ("BNSF Opening"), page 1.

⁹ The only terminal trackage rights granted over KCS in the UP/SP merger were pursuant to the terminal trackage rights application filed in the Sub No. 9 docket in F.D. 32760.

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Moreover, the BNSF Settlement Agreement itself likewise did not grant BNSF trackage rights on the Rosebluff Lead.¹⁰ Rather, the BNSF Settlement Agreement granted local trackage rights only for "Shipper Facilities *at points listed on Exhibit A* to this Agreement" and to "New Shipper Facilities ... *at pointed listed on Exhibit A.*" (Emphases added.) BNSF Settlement Agreement, paragraph 5(b). Exhibit A to the BNSF Settlement Agreement does not list the Rosebluff Lead. Rather, Harbor, LA is the only Louisiana point referred to in the paragraph 5(b) portion of Exhibit A. Harbor is a point on a former SP line extending from Mallard Junction, a line on which paragraph 5(a) of the BNSF Settlement Agreement specifically granted BNSF trackage rights. The Rosebluff Lead is a separate track.¹¹

CITGO's facility to which BNSF seeks access likewise does not meet the definition of "New Shipper Facilities" in the BNSF Settlement Agreement. Rather, CITGO's facility has existed since World War II,¹² and has received rail service for years. Accordingly, the BNSF Settlement Agreement did not grant BNSF trackage rights over the KCS and UP-owned Rosebluff Lead in West Lake Charles, contrary to BNSF's and Mr. Weicher's contentions. The

¹⁰ This proceeding applies only to the Rosebluff Lead. See BNSF Reply to 2nd Motion at 8 (objecting to discovery concerning track other than the Rosebluff Lead as irrelevant and not reasonably calculated to lead to discovery of admissible evidence).

Also, for simplicity in this proceeding, KCS adopts the description of the Rosebluff Lead from BNSF's Opening; the "Rosebluff Industrial Lead" or "Rosebluff Lead" means track extending approximately nine miles south from its connection to the UP-BNSF "50/50 Line" at Milepost 222.3; this line includes the Rosebluff Yard. See BNSF Opening, page 11.

¹¹ A recent UP timetable, contained in Exhibit E, at page 20, shows the Harbor Industrial Lead and the Rosebluff Industrial Lead as separate tracks. The timetable shows that the Harbor lead connects to the Lake Charles Industrial Lead, which connects to the Lafayette Sub at Mallard Junction, MP 215.4. The Rosebluff Industrial Lead connects to the Lafayette Sub at about MP 222.3.

¹² Per CITGO's website, <http://www.citgorefining.com/lake-charles/about-us>, the Lake Charles refinery was built in 1944.

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only means by which BNSF could seek to compel terminal trackage rights is through filing of a terminal trackage rights application.

Having now filed such an application, BNSF must meet the standard under the 49 U.S.C. 11102(a) to justify the relief it seeks. BNSF has the statutory burden of proof, not KCS or UP.¹³ Accordingly, BNSF must show that the relief requested is consistent with the public interest standard, as that standard has developed and been applied in Section 11102 cases, and it must show that its operations are practicable and will not substantially interfere with the operations of UP and KCS. BNSF fails to meet these requirements.

As to the public interest standard, BNSF simply claims that this standard has already been met because the Board imposed BNSF access to the Lake Charles Area as a condition to the merger. But this argument ignores that within the context of a terminal trackage rights application, there are only three possible public interest standards - service interruption;¹⁴ bridge the gap (applicable to limited segments connecting larger trackage rights in the context of a merger); and Midtec.¹⁵ Knowing it cannot meet any of these standards, BNSF barely addresses

¹³ See 5 U.S.C. §556(d) (“Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”). See also Dardanelle & Russellville Railroad Company—Trackage Rights Compensation—Arkansas Midland Railroad Company, Finance Docket No. 32625, 1996 STB Lexis 232 (STB) (served Sept. 5, 1996) (“As the party seeking an order setting compensation in this trackage rights proceeding, DRRC/CALM has the burden of proof.” [footnote omitted], citing 5 U.S.C. §556(d)); Ametek, Inc. - Petition For Declaratory Order; Ametek, Inc. v. Panther Valley Railroad Corporation, et al., Nos. 40663 and 40664, 1992 ICC Lexis 60 (STB) (“Irrespective of what statutory section is ultimately found to govern these proceedings, complainant-petitioner has the burden of proof. The general rule in complaint proceedings brought under the various provisions of the Interstate Commerce Act is that, unless otherwise specified in the statute, the burden of proof rests with the complainant,” citing 5 U.S.C. §556(d)); Union Pacific Railroad Company—Petition For Declaratory Order, FD 35504, slip op at 6 (served April 30, 2013) (“As the proponent of a declaratory order, UP has the burden of proof...”).

¹⁴ See 49 C.F.R. Part 1146.

¹⁵ Midtec Paper Corp., et al. v. Chicago and N.W. Transportation Co., 3 I.C.C. 2d 171 (1986), aff'd, 857 F.2d 1487 (D.C. Cir. 1988) (“Midtec”).

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them. As such, its Application must be denied for failure to meet its burden of proof on the public interest standard.

Because it cannot meet these long-standing public interest standards, BNSF chooses to create a new one, claiming that its Application must be granted “[f]or CITGO to have the competitive option that the Board deemed critical,” BNSF Opening at 17, and that without trackage rights “BNSF cannot play the competition-preserving role that the Board designated for it.”¹⁶ Of course, there is no precedent supporting any such public interest standard under Section 11102(a). Even if the standard BNSF puts forth were legally correct, the fact that BNSF is already an effective competitor for CITGO traffic would mean terminal trackage rights are not needed and the Application should be denied.

As shown herein in the Verified Statement of Dr. Robert Reynolds and Dr. Kevin Neels of the Brattle Group (referred to herein as “Exhibit A” or “Reynolds/Neels VS”), BNSF already provides competitive railroad service to CITGO and other Lake Charles Area shippers and has more than fulfilled the competitive role envisioned by the Board when the Board adopted (and expanded upon) UP’s and BNSF’s agreement to grant BNSF access to Lake Charles Area shippers in the first place. Accordingly, even applying the self-serving public interest standard articulated by BNSF, there is no public interest justification under any Section 11102(a) standard to further expand BNSF’s service, particularly when expansion would come at the expense of KCS and UP, the owners of the Rosebluff Lead, and the shippers they serve there. The public interest is already protected via BNSF’s existing service and access. As such, BNSF fails to meet any public interest standard, even its newly created one.

¹⁶ As a result of the Board’s condition and UP’s decision to fulfill that condition by granting BNSF access to the Lake Charles Area shippers via reciprocal switching/haulage rights, CITGO was one of the few shippers who saw their competitive options increased from 2-to-3. This was, and remains, an extremely rare situation in the context of railroad mergers.

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Even if BNSF had met the public interest standard, it must also establish that its proposed operations are practicable and will not substantially impair KCS's and UP's ability to handle CITGO's and other shippers' business. Despite having had nearly 2 years between filing its application in February 2013 and submitting its opening evidence in December 2014, BNSF has failed to meet this burden as well. Rather, BNSF has produced only cursory and conclusory opinion that its operations can be accommodated without interfering with KCS's and UP's operations.

KCS's evidence in this filing will show that not only is BNSF's proposed service impracticable, but it would also substantially harm KCS's service to shippers. As is shown in the attached Verified Statement of Messrs. Steve Sullivan and John Ireland of R.L. Banks & Associates ("Sullivan/Ireland VS"), BNSF's proposed operations to CITGO are not practicable and would impair KCS's ability to provide service to CITGO and its other customers.¹⁷ In addition, Assistant Vice President for KCS's Southwest Division Richard Bartoskewitz and KCS Senior Trainmaster Jimmy Wayne Scott, both of whom have current managerial responsibility for KCS operations on the Rosebluff Lead, provide verified statements that show BNSF's proposal is not compatible with current operations and would curtail KCS's ability to serve shippers.¹⁸

KCS will also show that the vagueness of BNSF's service proposal hides the magnitude of the disruptions of KCS and UP service. For example, BNSF does not disclose how many shipments it plans to handle for CITGO or other affected shippers. These facts affect how often

¹⁷ See Joint Verified Statement of Messrs. Steve Sullivan and John Ireland of R.L. Banks & Associates (referred to herein as Exhibit B or "Sullivan/Ireland VS") at 16 and 22.

¹⁸ See Verified Statement of Richard Bartoskewitz (referred to herein as "Exhibit C" or "Bartoskewitz VS") at 9-12 and Verified Statement of Jimmy Wayne Scott (referred to herein as "Exhibit D" or "Scott VS") at 10-11.

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KCS or UP would have to curtail their operations to create a 'window' for BNSF'S operations. BNSF fails to disclose that the BNSF Settlement Agreement does not allow BNSF to handle only unit trains for certain commodities for a customer under trackage rights, but instead actually requires it to handle all traffic moving via BNSF for that particular customer. Again, this affects how many 'windows' BNSF's proposal would require. And BNSF fails to offer any plan for how it would serve the many shippers on the Rosebluff Lead other than CITGO, shippers whose shipping and facilities may not match BNSF's plans that only contemplate taking whole trains totally inside shippers' plants to clear the Rosebluff Lead. BNSF knows these facts would show that its proffered operating plan is impracticable, so it ignores them.¹⁹ The Board, however, cannot ignore them.

BNSF's application also fails because BNSF says that it will not compensate KCS for use of KCS's property. Section 11102(a) requires that compensation be paid by the trackage rights user to the track owner for the use of its tracks. Nevertheless, BNSF insists that "any compensation due to KCS is the responsibility of UP,"²⁰ even though it is BNSF who would be using KCS's tracks and the statute requires the trackage rights user to pay the track owner(s). Extrapolating from its already misleading argument that the Board already granted it trackage rights, BNSF also attempts to convince the Board that the trackage rights fee set between UP and BNSF for thousands of miles of largely overhead trackage rights also fixes the cost of access to provide local service on the Rosebluff Lead. The fact that KCS never agreed to such a fee is, like many other facts, ignored by BNSF. Extrapolating even further, BNSF says that the Board "should not require that whatever compensation may be payable by UP to KCS ...be established

¹⁹ Likewise, BNSF ignores the requirement of Section 11102(a) that it negotiate conditions for use of trackage rights property or that the Board set such conditions. Instead, BNSF's application asks the Board to set BNSF free to demand whatever it wants of KCS and UP, unconditioned.

²⁰ See BNSF Opening at 21.

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before BNSF begins use of the terminal facilities." See BNSF Opening at 21-22. These two statements are completely contrary to the statute, which explicitly requires that compensation be set and that, "[t]he compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another." In short, despite never having purchased, built or maintained any part of the Rosebluff Lead, BNSF doesn't offer to pay a dime for being granted even better access than UP and KCS - the owners of the facility - have today.²¹

Finally, recognizing that its Application is factually and legally deficient, BNSF says that even if its Application is denied; the Board should simply "override . . . the terms of the joint facility agreements that KCS has invoked" to grant BNSF access. See BNSF Opening at 23. Such an override would exceed the Board's authority. The Board's "override" authority is found at Section 11321(a). Under Board precedent, an "override" of contractual terms is available only "if necessary" to carry out a Board approved transaction. In this case, the approved transaction has been implemented for nearly nineteen years, and BNSF has, during that entire time, had the right to "handle traffic of shippers open to all of UP, SP and KCS at... Rose Bluff," as that condition required. An override cannot be found to be "necessary" under such circumstances. Moreover, as BNSF has refused to participate in arbitration or the declaratory judgment proceeding KCS filed in court in Louisiana - to obtain an authoritative judicial interpretation of the joint facility agreements, as Board precedent requires - the Board would not even know what provisions to override. Unfazed, BNSF simply asks for an undefined override of these longstanding, carefully-crafted contracts that are designed to make efficient use of the constrained Rosebluff Lead facilities.

²¹ Under Article I.E of the 1981 zone switching agreement covering the KCS-UP joint facilities, KCS cannot deliver less than 25 cars of the same commodity moving on the same bill of lading to a shipper in Zone 2 such as CITGO. BNSF, however, seeks unlimited access.

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In short, this proceeding is not about whether BNSF can fulfill the competitive role envisioned by the Board in the Lake Charles Area. BNSF has in fact been fulfilling that role by serving Lake Charles Area shippers for nearly nineteen years. Rather, this proceeding is really about BNSF and CITGO trying to obtain forced access over the private property of UP and KCS, in direct contradiction to private contracts governing that property as well as the statutes that govern the Board. BNSF's proposed access to CITGO would also damage service to other shippers on the Rosebluff Lead. Granting BNSF's Application is not in the public interest and would substantially impair UP's and KCS's operations. BNSF's Application should be completely denied.

ARGUMENT

I. BNSF HAS NOT BEEN PREVIOUSLY GRANTED TRackage RIGHTS EITHER AS MATTER OF CONTRACT OR LAW

The fundamental premise of BNSF's public interest argument is that it has already been granted direct terminal trackage rights over the Rosebluff Lead so that application of the terminal trackage rights statute and the underlying public interest test is merely "a straightforward technical exercise." BNSF-123 at 2. BNSF's fundamental premise is wrong for several reasons. First, in the UP/SP merger, UP could not and did not grant trackage rights to BNSF because the joint facility contracts prohibited UP from granting a third party access without the consent of KCS, which was never obtained. Second, the Board did not, and could not, absent the filing of a terminal trackage rights application and fulfillment of the requirements under Section 11102(a), grant BNSF trackage rights over the KCS/UP jointly owned tracks because KCS was not an applicant in the UP/SP proceeding. Third, the language of the BNSF Settlement Agreement, which incorporates the CMA Agreement, has twice been filed with and approved by the Board, and it does not grant BNSF trackage rights over the Rosebluff Lead. Fourth, a review of the

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history of the Lake Charles Condition shows that BNSF was not granted trackage rights on the Rosebluff Lead but instead was required to file a terminal trackage rights application, meeting the Section 11102 standards, to seek such rights. Having not been previously granted trackage rights and now having filed a terminal trackage rights application, BNSF must meet the Section 11102 standards. Under that section, the public interest test is not a mere technical exercise.

A. The Joint Facility Agreements Governing The Rosebluff Lead Prevented UP From Granting BNSF Terminal Trackage Rights Over The Rosebluff Lead

Ownership and operation of Rosebluff Lead that BNSF seeks to operate over has long been governed by a series of private agreements. In accordance with these agreements, there are two, very basic facts that the Board must keep in mind in handling this proceeding. First, KCS and UP are equal owners of the Rosebluff Lead, with equal rights to use the tracks. Neither owner can give another use of the facilities without the consent of the other owner. Second, since 1981, KCS and SP (now UP) have operated the Rosebluff Lead under agreements designed to maximize service and minimize inefficiency by separating operations into two zones, with KCS operating one and UP operating the other, and allowing operation in each other's zone only under very limited circumstances. The insertion of BNSF's operations into the middle of these long-standing agreements and carefully coordinated operations would severely disrupt this long-standing relationship.

In May 1947, KCS and the Texas & New Orleans Railroad Company ("T&NO")(now UP)²² jointly purchased the Rosebluff Lead from the federal government, which declared the track to be surplus government property following the end of World War II. See Exhibit F (copy of deed to KCS and T&NO). The deed granted KCS and T&NO identical interests in the facility, using the term "Purchaser" to represent the two railroads together. The deed covered

²² T&NO was a predecessor of SP, which was merged into UP.

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4.788 miles of main track and 1.635 miles of other track. In March 1948, KCS and T&NO concluded an agreement governing their use of the jointly-owned property. See March 1948 agreement previously submitted as part of Exhibit D to KCS's Reply submitted in this proceeding on March 19, 2013. The two parties affirmed that "The right of way, tracks and all other property described in said May 21, 1947 deed is owned jointly and equally by them," and provided for "Each party...[to] pay taxes on its undivided half interest in the jointly owned tracks." Id., Sections 1 and 9. The agreement provided for the parties to add to and improve the track and to share the costs of added facilities. Id., Sections 2 and 3. Provisions for performing and paying for maintenance (Sections 4 - 8); for per diem responsibility to remain with the line-haul carrier (Section 13); for liability (Sections 15 and 16), and arbitration (Section 18) were also included. Of particular note, neither party could "sell, lease or transfer its interest in the jointly owned tracks, or any part thereof, without advance written approval by the other party." Id., Section 19.

The operations of KCS and UP under these provisions are discussed in the verified statement of KCS Senior Trainmaster Jimmy Wayne Scott, attached as Exhibit D, Scott VS. Mr. Scott notes that over the years, operations have changed, but always through the consent and coordination of both parties. At no point did the parties do away with the consent provision of Section 19, and at no point did UP request KCS's consent to BNSF having trackage rights on the Rosebluff Lead.²³ From the record, it appears that no party disputes the notion that the

²³ The use of property is a fundamental attribute of ownership. See e.g., Henneford, et al. v. Silas Mason Co., 300 U.S. 577, 57 S.Ct. 524 (1937) ("The privilege of use is only one attribute, among many, of the bundle of privileges that make up property ownership," citing cases). Inherent in this right of ownership is the right to exclude others from use. See e.g., Nollan, et ux. v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141 (1987) (" We have repeatedly held that, as to property reserved by its owner for private use, 'the right to exclude [others is] 'one of the most essential sticks in the bundle of rights that are commonly characterized as

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agreements prevent UP from granting BNSF terminal trackage rights over the Rosebluff Lead. Accordingly, UP could not have legally granted BNSF access to the Rosebluff Lead without violating its contractual obligations. Neither could the Board grant BNSF such access without likewise violating these private contracts.

B. The Board Likewise Had No Legal Authority To Compel KCS To Grant BNSF Trackage Rights Over KCS's Tracks

BNSF also urges that the Board, through its regulatory power, has already granted BNSF trackage rights over the Rosebluff Lead. However, neither the facts nor the law support the argument. The Board could not have granted BNSF trackage rights on the Rosebluff Lead because the Board had no authority to compel KCS, a non-applicant carrier, to allow BNSF to operate over KCS owned tracks, absent a terminal trackage rights application (which BNSF did not file until February 2013).

It is black letter law that the Board cannot compel non-applicant railroads, like KCS was in the UP/SP merger, to grant trackage rights to other carriers in connection with a proposed railroad consolidation transaction. See In Rio Grande Industries, et al.—Pur. & Track. — CMW Ry. Co., 5 I.C.C.2d 952, 978 (1989) (the Interstate Commerce Commission explained that it could not use its “plenary” authority under former section 11341 (now section 11324) “to compel a [non-applicant] carrier to grant trackage rights over its line to another carrier.”). See also Rio Grande Industries, Inc., et al. — Purchase and Related Trackage Rights — Soo Line Railroad

property.”) and Fresh Pond Shopping Center, Inc. v. Callahan, et al., 464 U.S. 875, 104 S.Ct. 218 (1983) (“property ownership carries with it a bundle of rights, including the right “to possess, use and dispose of it, [citing cases]... This power to exclude is 'one of the most treasured strands in an owner's bundle of property rights, ... [because] even though the owner may retain the bare legal right to dispose of the occupied space by transfer or sale, the permanent occupation of that space by a stranger would ordinarily empty the right of any value, since the purchaser will also be unable to make any use of the property.”) Trackage rights of course allow for one carrier to use the tracks of another.

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Company Line Between Kansas City, MO and Chicago, IL, Finance Docket No. 31505, Decision No. 6 slip op. at 8 (ICC served Nov. 15, 1989) where the ICC re-stated its position that it could not use the pendency of a consolidation proceeding as an excuse for imposing trackage rights over the lines of a non-applicant. This principle was later confirmed when the Board, in a post-UP/SP merger decision, refused to grant a third party trackage rights over KCS-owned lines where KCS was a non-applicant participant in the Canadian National/Illinois Central merger proceeding. Canadian National Ry., et al – Control – Illinois Central Corp., et al., STB Docket No. FD 33556 (Decision No. 37) (STB served May 25, 1999) (“CN/IC”), slip op. at 32. Clearly, contrary to BNSF’s assertions, the Board could not have already granted BNSF trackage rights over the KCS jointly owned track, as BNSF contends, because the Board lacked the legal authority to do so, and indeed, cannot do so unless and until the Board grants the Application, which it should not do.²⁴

C. Neither UP Nor The BNSF Settlement Agreement Granted BNSF Terminal Rights Over the Rosebluff Lead

Notwithstanding the language of the joint facilities contracts and clear precedent that a non-applicant carrier cannot be compelled to grant another carrier trackage rights unless such a carrier has met the requirements of Section 11102(a), BNSF wants the Board to believe that contracts and precedent don’t matter and that it has already been granted trackage rights to serve the Rosebluff Lead which the Board just needs to confirm. BNSF’s argument rests largely upon the language of the BNSF Settlement Agreement itself; however, BNSF is wrong. The clear

²⁴ That the Board has not granted BNSF trackage rights became particularly clear when the Board in Decision No. 63 required BNSF to file a terminal trackage rights application. This would have been a completely useless requirement if, as BNSF contends, the Board has already mandated that BNSF have trackage rights access.

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language of the BNSF Settlement Agreement, as filed with and approved by the Board, refutes BNSF's argument.

BNSF "witness"²⁵ Richard Weicher, cites to paragraphs 5(b) and 5(c) of the BNSF Settlement Agreement as the source of BNSF's supposed trackage rights on the Rosebluff Lead. Weicher VS at 7. In fact, however, those paragraphs do not say BNSF was granted trackage rights on the Rosebluff Lead. Rather, they only grant BNSF the right to "handle traffic of" shippers on the Rosebluff Lead. The language cited by Mr. Weicher grants trackage rights only

²⁵ The Weicher "statement" is argument, not evidence. In this proceeding, Mr. Weicher seeks to serve as both counsel representing BNSF and as a witness providing a verified statement in support of BNSF's application. Attorneys generally are discouraged from attempting such dual roles in an adjudicatory proceeding because of the difficulty for the trier of fact to distinguish evidence from advocacy. As explained in the notes to ABA Model Code of Professional Conduct, Rule 3.7 (http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_7_lawyer_as_witness.html):

The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

To the extent that Mr. Weicher's statement is intended to introduce documents, those documents speak for themselves. To the extent that Mr. Weicher attempts to tell the Board what the Board's decisions mean, those decisions speak for themselves. To the extent that Mr. Weicher attempts to introduce part of the 50/50 Line swap agreement, the statement is irrelevant, as BNSF has twice disavowed that agreement as a basis of this Application. See BNSF Opening, Weicher VS at 6; See also BNSF Reply to 2nd Motion at 5. In short, the Weicher "statement" is argument, not evidence.

To be very clear, KCS is not alleging that Mr. Weicher acted unethically. The prohibition against a lawyer testifying applies "at trial," and this matter, while an adjudicatory proceeding, is not "a trial." Rather, the Board should decline to consider Mr. Weicher's advocacy as evidence - particularly where it conflicts with the facts of paragraphs 5(b) and 5(c) of the BNSF Settlement Agreement - if for no other reason than to avoid discovery disputes where BNSF is claiming attorney-client privilege while having its attorneys submit supposed evidentiary statements, as has occurred here.

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in specified instances – specified locations and specified facilities – neither of which apply to CITGO or the Rosebluff Lead.

Section 5(b), describes the trackage rights granted by the BNSF Settlement Agreement:

The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein.

BNSF shall receive access on such lines only to (i) “2-to-1” Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP’s acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP’s acquisition of control of SP on the Trackage Rights Lines.”

BNSF’s Opening Statement, Weicher VS at 7 (emphasis supplied).

The definitions of “2-to-1 Shipper Facilities,” “Existing Transload Facilities,” and “New Shipper Facility,” however, do not encompass the CITGO facility or others on the Rosebluff Lead. The Rosebluff Lead is not a line listed in Exhibit A and is not a “Trackage Rights Line” as defined in the BNSF Settlement Agreement. Therefore, the provisions cited by BNSF do not grant it trackage rights to CITGO or other Rosebluff Lead shippers.

“2-to-1 Shipper Facilities” are defined on page 3 of the BNSF Settlement Agreement as shipper facilities “that were open to both UP and SP...and no other railroad when the 1995 Agreement was executed.” Id. The Rosebluff Lead, and in particular the CITGO facility, does not meet this definition because KCS had access in 1995.

“Transload Facilities” are defined on page 4 of the BNSF Settlement Agreement as facilities “where freight is transferred from one railcar to another or from one mode to another.” Id. Again, this description does not apply to the CITGO facility. Neither does the CITGO facility meet the definition of “New Shipper Facilities,” having been built in World War II with rail access.

Furthermore, neither is the Rosebluff Lead one of the lines listed on Exhibit A of the

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BNSF Settlement Agreement. The BNSF Settlement Agreement granted local trackage rights only for "Shipper Facilities *at points listed on Exhibit A* to this Agreement" and to "New Shipper Facilities... *at points listed on Exhibit A.*" (Emphases added.) BNSF Settlement Agreement, paragraph 5(b). Exhibit A to the BNSF Settlement Agreement does not list the Rosebluff Lead. Harbor, LA is the only Louisiana point referred to on the paragraph 5(b) portion of Exhibit A. Harbor, Louisiana is a point on a former SP line extending from Mallard Junction, a line on which paragraph 5(a) of the BNSF Settlement Agreement specifically granted BNSF trackage rights. The Rosebluff Lead is a separate track.²⁶

Neither is the Rosebluff Lead a "Trackage Rights Line" on which access to new shipper facilities might be accessed. "Trackage Rights Lines" are defined as lines over which trackage rights were granted in the BNSF Settlement Agreement. Section 5(a), headed "Eastern Texas-Louisiana Trackage Rights and Purchase" lists lines over which UP/SP granted trackage rights to BNSF in Louisiana. The Rosebluff Lead is not listed there.

Nor is BNSF granted trackage rights by Section 5(c) of the BNSF Settlement Agreement. Section 5(c) provides "Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor." *Id.* But again, the Rosebluff Lead is not listed on Exhibit A, so this doesn't apply. Section 5(c) also states, "Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage... (iii) with UP/SP's prior agreement reciprocal switching...; or (iv)

²⁶ A recent UP timetable, contained in Exhibit E, at page 20, shows the Harbor Industrial Lead and the Rosebluff Industrial Lead as separate tracks. The timetable shows that the Harbor lead connects to the Lake Charles Industrial Lead, which connects to the Lafayette Sub at Mallard Junction, MP 215.4. The Rosebluff Industrial Lead connects to the Lafayette Sub at about MP 222.3.

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with UP/SP's prior agreement, the use of a third party contractor..." Id. The Rosebluff Lead is not a "Trackage Rights Line" listed in paragraph 5(a) and is not listed on Exhibit A, and CITGO is not a "New Shipper Facility" under the agreement's definitions.

Accordingly, none of the provisions in Section 5(b) or (c) grant BNSF trackage rights to serve CITGO. The only "right" given in Decisions No. 44 and 63, and the BNSF Settlement Agreement, was the right to "handle the traffic."²⁷ How BNSF was to "handle" the traffic was not set forth, but it certainly was not included in the direct grant of trackage rights pursuant to the BNSF Settlement Agreement. While Mr. Weicher may argue otherwise, his interpretation is not consistent with plain language of the BNSF Settlement Agreement. Neither is it consistent with the historical context of the Lake Charles Condition.

D. The History Of The Lake Charles Condition Confirms That BNSF Was Never Granted Terminal Trackage Rights

The history of the Lake Charles Condition confirms that UP did not grant terminal trackage rights to BNSF over the Rosebluff Lead in either the BNSF Settlement Agreement or the CMA Agreement, which are the agreements the Board relied upon when granting BNSF the right to serve shippers in the Lake Charles Area. The original UP/SP merger application included a pre-filing negotiated settlement, dated September 25, 1995, between UP and BNSF and a supplemental agreement dated November 18, 1995. (UP/SP-22 at 348-359²⁸). These two agreements were generally referred to in the singular as the "BNSF Settlement Agreement." As

²⁷ Separately from the description of trackage rights granted in Section 5, paragraph 5(b) does say, "BNSF shall also have the right to handle traffic..." of Rosebluff shippers, but that is separate from the statement of where trackage rights are granted. This separate sentence specific to Lake Charles also does not state that the right to handle traffic was via a grant of trackage rights.

²⁸ References to UP/SP-# or BN/SF-# are references to pleadings in the F.D. 32760 proceeding which were numbered sequentially by each filer, per the Board's instruction. The September 25, 1995 agreement between applicants and BNSF was denoted UP/SP-22.

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all parties acknowledge, the BNSF Settlement Agreement granted BNSF certain trackage, marketing, haulage, and other rights to serve shippers who, prior to the merger were served by only UP and SP and no other carrier (so-called “2-to-1” shippers). The intent was to preserve, in a post-merger environment, two carrier competition at all locations previously served by only UP and SP and no other carrier. Importantly, however, the original BNSF Settlement Agreement did not grant BNSF any trackage rights to the Lake Charles Area. For the most part, the Lake Charles Area did not qualify as a 2-to-1 area.

After the close of submission of evidence supporting or opposing the UP/SP merger, UP/SP, BNSF, and what was then known as the Chemical Manufacturers Association announced a modification of the BNSF Settlement Agreement to resolve various concerns asserted by some chemical shippers entered into the CMA Agreement. The CMA Agreement was a product of UP’s efforts to convince CMA to withdraw its opposition to the UP/SP merger. The CMA Agreement did give BNSF access to handle traffic of Lake Charles and Westlake shippers moving over New Orleans or to or from Mexico if the shipper had access to UP, SP, and KCS,²⁹ but it did not grant BNSF access to West Lake Charles, i.e. the Rosebluff Lead, including CITGO. The CMA Agreement also was not structured to require terminal trackage rights. Instead, the CMA Agreement included provisions requiring the payment of switch fees for UP to physically handle Lake Charles Area traffic to the nearest interchange point with BNSF and for UP to provide BNSF with “haulage rights.” There were no financial or operating terms governing terminal trackage rights.

²⁹ The rights granted to BNSF in the CMA Agreement applied only to traffic moving (a) from, to, and via New Orleans, and (b) to or from points in Mexico via the Texas border crossings at Eagle Pass, Laredo or Brownsville. Again, the right was to “handle traffic.” The CMA Agreement did not say that BNSF was to have trackage rights.

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It was not until the June 3, 1996 simultaneous filing of closing briefs by all parties, that the public (and the Board) first learned UP would make an additional amendment to the BNSF Settlement Agreement, including expanding the CMA Agreement to include West Lake Charles, including the Rosebluff Lead. Again, the form of that access was not specifically delineated. Furthermore, KCS was not consulted and certainly did not consent to BNSF being given access to handle traffic on the Rosebluff Lead. There was likewise no discussion or provisions providing KCS with compensation for BNSF access to West Lake Charles.

After the briefs were filed, UP/SP and BNSF entered into yet another supplement to the BNSF Settlement Agreement regarding switching fees (referencing UP/SP-BNSF reciprocal switch charges at points other than 2-to-1 points). Because the Lake Charles Area was not a 2-to-1 point, the supplement dealing with reciprocal switching points at non 2-to-1 locations once again appeared to confirm that UP's commitment to BNSF for access to the Lake Charles Area was to be via switching/haulage and was not for terminal trackage rights.³⁰ Unfortunately, procedures did not allow KCS at that stage of the proceeding to clarify what type of access UP was purporting to grant BNSF, though KCS presumed it was switching rights.

On August 6, 1996, the STB approved the UP/SP merger subject to various conditions ("Decision No. 44").³¹ In Decision No. 44, the Board adopted the BNSF Settlement Agreement as amended by the CMA Agreement (and the post-briefing UP-BNSF agreed modifications to them), and expanded BNSF's access to the Lake Charles Area in three ways. First, at Shreveport

³⁰ Likewise, in BN/SF-70, BNSF's response to KCS's petition to reconsider the Lake Charles Condition, BNSF indicated on page 11 that if BNSF elects to serve Lake Charles Area shippers via reciprocal switch, then KCS's arguments would be moot because reciprocal switch is not affected by the joint facility agreements, nor does it require KCS's consent. This indicated to KCS that BNSF viewed its access as switching rights.

³¹ See Union Pacific Corp.—Control & Merger—Southern Pacific Rail Corp., FD 32760 (Decision No. 44) (STB served May 31, 1996).

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and Texarkana, the Board allowed BNSF to interchange traffic with KCS that was originated by KCS or delivered by KCS to shippers at Lake Charles, Westlake or West Lake Charles.³²

Second, the Board removed the Mexico and New Orleans routing limitations established by Section 8 of the CMA Agreement, vastly expanding even the broadened rights UP had agreed to after the close of evidence.³³ This broadening enabled BNSF to handle traffic to/from shippers open to all of UP, SP and KCS at Lake Charles, Westlake and West Lake Charles from/to serve all origins/destinations. Third, the Board ordered UP/SP to remove the haulage charge (but not the switch charge) which UP sought to impose on BNSF under Section 8 of the CMA Agreement.³⁴ The Board showed no awareness of the specifics of the KCS-SP joint facility agreements. The Board also did not say that BNSF's access was to be via terminal trackage rights. BNSF was merely given the right to "handle traffic of shippers open to all of UP, SP and KCS at... Rose Bluff."

Because KCS did not believe that UP or the Board had the right to grant BNSF any form of access, even reciprocal switching rights,³⁵ KCS petitioned the Board to reconsider its decision regarding BNSF access to Lake Charles Area shippers. See KCS-65 (Filed Sept. 3, 1996). KCS argued that the joint facility agreements at a very minimum required that BNSF gain KCS's

³² See Id., slip op. at 153. This is an important feature because it indicates that BNSF was not to have terminal trackage rights. If BNSF was given trackage rights to serve the Lake Charles Area shippers, as it now claims, there would be no point in providing BNSF with the right to interchange with KCS for purposes of KCS either originating or terminating Lake Charles Area traffic at those locations switched exclusively by KCS and not UP. Instead, BNSF could have just originated or terminated without the involvement of KCS, which is obviously what BNSF is trying to do today.

³³ See Id.

³⁴ See Id., slip op. at 153-154.

³⁵ KCS believed that the four SP-KCS joint facility agreements for the Lake Charles Area did not allow UP to grant BNSF any form of access (including switching or haulage) to Lake Charles Area shippers on those joint facilities without KCS's consent. KCS also believed that the Board had no authority to impose trackage rights on non-applicants such as KCS.

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consent to any form of access, or if BNSF wanted trackage rights, it should file a terminal trackage rights application.

On December 4, 1996, the Board issued Decision No. 63 addressing the KCS Petition and BNSF Reply. While the Board upheld BNSF's right to "handle traffic" of Lake Charles Area shippers, the Board did not hold that terminal trackage rights were in the public interest as that term is defined in Section 11102 or that BNSF had already been granted such trackage rights so that the filing of a terminal trackage rights application sometime in the future would be a mere formality. Rather, Decision No. 63 was quite specific. The parties were to negotiate the form of BNSF's access to Lake Charles Area, and if KCS, BNSF and UP/SP were not able to come to an agreement regarding some form of BNSF access, the four joint facility agreements were to be submitted to arbitration for interpretation. Id. Only if the parties were unable to agree and the arbitral interpretation produced a situation where BNSF access to the Lake Charles Area was blocked, could BNSF then return to the Board to seek approval of a terminal trackage rights application. Id. Only as a last resort would the Board consider whether an override of the terms of the joint facility agreements might be necessary. Id.

BNSF never returned to the Board pursuant to Decision No. 63, never invoked arbitration, and until two years ago, never filed a terminal trackage rights application. Nor could it have returned to the Board under the terms of Decision No. 63 because BNSF's access was not blocked and still isn't today. BNSF was able to achieve the access that it sought through an agreement with UP for switching and haulage, which is fully consistent with the language of the BNSF Settlement Agreement. Only now, in the context of this proceeding, does BNSF assert that it was always granted trackage rights and that use of a terminal trackage rights Application is a mere formality to implement those rights.

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The BNSF Settlement Agreement and the historical context of the UP/SP merger show that BNSF was never granted trackage rights on the Rosebluff Lead. For UP to do so without KCS's consent would have violated the long-standing private contracts. For the Board to do it, also would have violated those agreements and long-standing Board precedent that it cannot compel trackage rights on non-merging carriers, such as KCS. Furthermore, such a grant of trackage rights would not have been consistent with the various filings and assertions made during the UP/SP proceeding. Lake Charles was not a 2-to-1 point covered by the trackage rights language, nor, did the BNSF Settlement Agreement, even as resubmitted in 2002 by BNSF and UP, grant BNSF terminal trackage rights on the Rosebluff Lead.

II. BNSF HAS NOT MET ANY PUBLIC INTEREST STANDARD FOR A GRANT OF TERMINAL TRACKAGE RIGHTS

Although Decision No. 63 required BNSF to meet certain pre-requisites before filing a terminal trackage rights application (i.e. negotiations and arbitration), which pre-requisites were not met, the Board nonetheless said in Decision No. 2 in this sub-docket that BNSF was entitled to file a terminal trackage rights application because “any rail carrier may file a terminal trackage rights application under 49 U.S.C. § 11102 without permission from the Board” at any time. See FD 32760 (Sub-No. 46), Decision No. 2, n. 8. Having now filed an application under Section 11102(a), BNSF, like any other shipper or carrier seeking to invoke Section 11102(a), must meet the public interest test applicable to other terminal trackage rights application. BNSF has not met that test.

There are only three “public interest” standards that justify granting a terminal trackage rights application: Midtec; a service failure so as to justify prescription of alternative service, or “bridge the gap” rights filed within the context of merger. Since the Board created the bridge-the-gap standard in this proceeding in 1996, there have been no other legally articulated standards

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other than these three. The Board has developed these strict standards because terminal trackage rights are intended to be the “remedy of last resort.” See Shenango Inc., et. al. v. Pitts., Charters & Youghiogheny Ry. Co., 5 I.C.C.2d 995,1002 (1989) (as an ameliorative condition, “[t]rackage rights are a remedy of last resort for use when less intrusive remedies such as rate relief and reciprocal switching are insufficient”). Terminal trackage rights are not to be granted if there are less intrusive remedies. Western Fuels Service Corporation v. The Burlington Northern and Santa Fe Railway Company, et al., STB Docket No. NOR 41987, et al. (STB served Jul. 28, 1997), slip op. at 7 (“[a]s we have stated on several occasions, the prescription of terminal trackage rights is an extraordinary remedy, one to be afforded only when less intrusive remedies such as rate relief, alternative through routes, or reciprocal switching are insufficient”) (citations omitted).³⁶ Even in the context of a merger, terminal trackage rights have only been granted “in limited circumstances where the rights were designed to bridge a gap within broader trackage rights imposed on applicants and deemed necessary to remedy or mitigate anticompetitive effects in the transaction.” CN/IC, slip op. at 51-52 (citation omitted). Accordingly, BNSF has to meet at least one of these three standards in order to meet the public interest standard. BNSF has fallen far short of meeting any of these standards.

A. BNSF Has Not Met The Midtec Standard

BNSF does not argue that its requested trackage rights are appropriate under Midtec. Instead, BNSF disavows the applicability of Midtec (BNSF Opening Statement at 24-25, n. 9) and makes no attempt to fit within that standard. Yet, Midtec is in fact the applicable precedent for this Application, as it would be for any other terminal trackage rights application filed by any

³⁶ Of course as discussed further herein, the lesser intrusive remedy of BNSF access via haulage and switching rights have proven more than sufficient for BNSF to fulfill the competitive role that the Board envisioned it to fulfill.

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other party seeking compelled trackage rights outside of a service failure case and not filed during the merger proceeding. Indeed, the Board has previously made it clear that in a non-merger context, the Board's well-articulated standards applicable to terminal trackage rights applications must be followed. See Western Fuels Service Corporation v. The Burlington Northern and Santa Fe Railway Company, et al., STB Docket No. NOR 41987, et al. (STB served Jul. 28, 1997), slip op. at 7 (decided after UP/SP)(rejecting argument that the Board could apply the public interest language of 49 U.S.C. 11102 without regard to the competitive access regulations and Midtec in a non-merger proceeding).³⁷

Under the Midtec standard, BNSF needs to show that UP's and KCS's actions were anticompetitive so as to justify BNSF terminal trackage rights. Types of anticompetitive actions include foreclosure; refusal to deal; price squeezes; or any other recognizable form of monopolization or predation. See Vista Chemical Company v. The Atchison, Topeka and Santa Fe Railway Company, 5 I.C.C. 2d 331, 336 (1989). BNSF has not met or even attempted to meet this standard or to show that UP's and KCS's action are anticompetitive. Nor could BNSF make such a showing. BNSF's access is not foreclosed or blocked at all. BNSF already accesses the CITGO facility today via a reciprocal switching arrangement to which KCS has consented. There is no evidence by BNSF that its lack of trackage rights has prevented it from competing. BNSF simply claims that it does not have to provide any evidence or argument regarding its competitive situation because such evidence is not even relevant. It is not

³⁷ As articulated in Decision No. 2 issued in this proceeding, BNSF was not required to follow the steps outlined in Decision No. 63 before filing its Application. One of the rationales given for that holding was that "any rail carrier may file a terminal trackage rights application under 49 U.S.C. § 11102 without permission from the Board" at any time. See FD 32760 (Sub-No. 46), Decision No. 2, n. 8. If this is the rationale for allowing BNSF's application to proceed, then BNSF should be required to abide by the Board's well-articulated standard applicable to terminal trackage rights applications filed outside of a merger or service inadequacy claim. That standard is the Midtec standard.

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irrelevant, but if anything, as Drs. Reynolds and Neels show in their verified statement, BNSF is a very effective competitor to both UP and KCS and there is no basis to claim that actions taken by KCS and UP have blocked BNSF access or are engaging in anticompetitive practices.³⁸

B. BNSF Has Not Met The “Bridge The Gap” Standard

Outside of Midtec and the 49 CFR §1146 standard (which involves service failures such as extended embargoes and which all parties agree is inapplicable to this situation), there is only one other public interest standard: the “fill the gap” or “bridge the gap” standard. It was this standard that was applied when the Board granted a terminal trackage rights application for overhead rights on three small segments of KCS track as part of Decision No. 44. While BNSF did at least briefly address this standard in its Opening Statement, BNSF’s feeble attempt to shoehorn the facts of this Application into that standard by claiming that the “basic fact patterns are essentially identical,”³⁹ is simply not accurate.

The bridge the gap standard is not applicable to the Rosebluff Lead. One will search long and hard to find any language in Decision Nos. 44 or 63 that indicates that the standard should apply to a terminal trackage rights application filed years after a merger was consummated or that it applies to anything other than the limited situation of connecting two segments of track within the context of a merger proceeding where such a connection is necessary to implement a merger condition.

Even if the “bridge the gap” standard applied to this stand-alone application, BNSF has failed to meet the test for obtaining terminal trackage rights under the bridge the gap standard. In the UP/SP merger, the Board had to decide on a terminal trackage rights application UP sought

³⁸ Merely because KCS has refused to allow BNSF to use KCS property without an agreement and without compensation is not anticompetitive behavior warranting the extreme remedy of terminal trackage rights.

³⁹ See BNSF Opening at 23-24.

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for itself and for rights it sought for BNSF over two small segments of KCS track in Shreveport and one small segment of KCS track in Beaumont. This terminal trackage rights application was filed concurrently with the merger application and the trackage rights were, according to UP and BNSF, needed for BNSF to conduct its trackage rights operations over the segments between Houston and Memphis and between Houston and New Orleans under the BNSF Settlement Agreement. The small segments owned by KCS were short track segments connecting large track segments owned by either UP or SP over which UP was granting BNSF extensive interstate trackage rights. KCS was unwilling to grant BNSF access over these small segments without an agreement and without adequate compensation. As such, UP and BNSF filed the terminal trackage rights application as part of the merger application.

With respect to the public interest standard, KCS argued that Midtec applied. The Board acknowledged that there was language from previous decisions supporting KCS's view, but specifically overruled such prior language and created a new standard applicable only to mergers. The Board said that in the context of that particular merger and factual situation, Midtec was not the applicable standard. Instead, the Board created a new standard – the “bridge the gap” standard. Under this newly created standard, the Board found that the public interest was met because BNSF's use of the three small KCS segments was “essential to the merger conditions permitting BNSF to provide a competitive alternative in the Houston-Memphis and Houston-New Orleans corridors.” Decision No. 44, slip op. at 168. Without the use of these three small segments, there would be “gaps” in BNSF's ability to utilize its trackage rights, which were a necessary condition to ameliorating the anticompetitive effects of the merger. Thus, an exception to Midtec was created, but this exception was to be rarely applied and only in limited circumstances. See CN/IC, slip op. at 51-52 (citation omitted)(decided two years

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later)(noting that the Board has required non-applicant carriers to grant terminal trackage rights to another carrier only in limited circumstances where the rights were designed to bridge a gap within broader trackage rights imposed on applicants or deemed necessary to remedy or mitigate anticompetitive effects in the transaction).

By its own admission, BNSF's Application in this case is not for a small intermediate segment in the middle of a much larger, generally overhead, extensive grant of interstate trackage rights; rather, it seeks unlimited rights to pick up, deliver and directly serve CITGO and multiple other shipper facilities on a densely used industrial lead at one location. Neither are the rights "necessary" to mitigate an anticompetitive effect of the UP/SP merger for the Lake Charles Area shippers. As is discussed in the next section, those anticompetitive effects were long ago mitigated through the less intrusive remedy of switching and haulage. Here, BNSF simply seeks to cut its costs and improve its profit margin at the expense of KCS, UP and the shippers on the Rosebluff Lead.

Contrary to what BNSF feebly attempts to argue, the facts here are certainly not "essentially identical" to the facts surrounding the terminal trackage rights granted in UP/SP, as clarified in CN/IC. The distinctions between this case and UP/SP are not "immaterial" as BNSF claims. BNSF Opening at 25, n. 9. Clearly, the trackage rights here are not needed to "bridge the gap" or to mitigate anticompetitive actions taken by UP or KCS. As such, BNSF has failed to meet any of the public interest standards applicable to a Section 11102 proceeding and its Application should be denied.

III. TERMINAL TRACKAGE RIGHTS ARE NOT NEEDED TO ENSURE THAT BNSF CAN COMPETE WITH UP AND KCS

Perhaps acknowledging that it can't meet any of the legally approved public interest standards, BNSF argues that public interest requirement has already been met because,

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purportedly, the Board made a determination long ago in Decision No. 44 that BNSF trackage rights to the Lake Charles Area met the public interest test of Section 11102.⁴⁰ Of course, this is circular logic, and ignores that there is no language in Decision No. 44 holding that BNSF's access to Lake Charles should be via terminal trackage rights or that the Section 11102 "public interest" test was met those many years ago. Indeed, how could there have been such language? Unlike the bridge the gap terminal trackage rights application, BNSF did not even file such an application for terminal trackage on the Rosebluff Lead. Indeed, the public interest element of Section 11102 was not even discussed in the context of the Lake Charles Condition in either Decision 44 or 63.

Having now filed an application, and as discussed above, BNSF needs to meet at least one of the three tests applicable in a Section 11102 proceeding – none of which BNSF has met. Instead of meeting these standards, BNSF simply claims that because UP and the Board granted it "trackage rights" (which, as noted above, is not an accurate statement because BNSF was granted "access" or the "right to handle" traffic for Lake Charles Area shippers -- which is not the same as trackage rights), to implement that grant of trackage rights, the Board should ignore all previous precedents applicable to imposing trackage rights on non-applicant carriers, ignore all previous precedents applicable to terminal trackage rights applications, and simply make a de jure finding that the Section 11102 public interest test has already been met and grant the Application. Such an argument has no basis in law or fact and should be outright rejected.

BNSF attempts to justify its unsupported application of the public interest standard by arguing that the "public interest" requires BNSF to have terminal trackage rights as a necessary

⁴⁰ See BNSF Reply to 1st Motion at 5. The Board has "already ... conclusively determined (in Decision No. 44), and then reconfirmed (in Decision No. 63) that terminal trackage rights were a vital and necessary component in resolving the loss of competitive options to Lake Charles area shippers as a result of an inadequately-conditioned UP/SP merger."

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component to fulfilling the Lake Charles Condition so as to preserve the pre-merger competitive options of the Lake Charles Area shippers. Indeed, BNSF goes so far as to claim that the failure to give them terminal trackage rights would “defeat the Board’s prior efforts to preserve the pre-merger competition that existed between UP and SP,” BNSF Opening at 13, and that “direct BNSF service is a vital and necessary component in resolving the loss of competitive options to Lake Charles area shippers.” *Id.* at 15. BNSF further claims that its Application must be granted “[f]or CITGO to have the competitive option that the Board deemed critical.” *Id.* at

Yet, BNSF presents no evidence to show that its current access has not “resolved the loss of competitive options” or that it is unable to “play the competition-preserving role that the Board designated for it” under its current access. Indeed, as shown by Drs. Reynolds and Neels, BNSF does compete with both UP and KCS, and quite effectively. BNSF’s existing access, which is through switching and haulage rights,⁴¹ has allowed BNSF to more than fully replicate the competition that would have otherwise been lost when SP merged into UP. As such, even if the Board were to create a new public interest standard based upon whether or not BNSF has replicated the competition that would have otherwise been lost when SP merged into UP, BNSF fails to meet such a standard because there is no need to impose terminal trackage rights to preserve shippers’ pre-merger competitive options.

A. Drs. Reynolds’ and Neels’ Analysis Establishes That BNSF Is Already An Effective Competitor Without Terminal Trackage Rights

KCS is not required to disprove BNSF’s claims that terminal trackage rights are “critical” and “required” for BNSF to be an effective competitor, as BNSF claims. Nevertheless, KCS will

⁴¹ Even though KCS’s consent was not obtained when UP and BNSF entered into their switching and haulage arrangement, KCS has not challenged this arrangement as a breach of the various joint facility agreements. It should be noted that with one exception, KCS also serves the CITGO facility via UP switching services. As such, BNSF’s Application actually seeks more access to CITGO than KCS itself has.

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do so. KCS retained Dr. Robert Reynolds and Dr. Kevin Neels of the Brattle Group to examine BNSF's assertions that terminal trackage rights are necessary for BNSF to be an effective competitor. In preparing their attached verified statement, Drs. Reynolds and Neels used access granted by the Board to the STB's confidential waybill sample for the years 1996-2013 for originations and terminations in the Lake Charles Area.⁴² They combined that information with UP's, BNSF's and KCS's 100% traffic tapes for Lake Charles Area terminations and originations for the years 2012 and 2013⁴³ to analyze market shares, traffic patterns, and the competitive roles played by UP, KCS and BNSF in the Lake Charles Area. This analysis was further supplemented by a limited amount of documents produced by UP, CITGO, and BNSF during the discovery process. As explained in the verified statement, Drs. Reynolds and Neels concluded that BNSF is already an effective competitor for CITGO's traffic; that BNSF has provided competitive railroad service to CITGO and other Lake Charles Area shippers for years; and has more than fulfilled the role of a competitive substitute for an independent SP as envisioned by the Board when it adopted (and expanded upon) UP's and BNSF's agreement to grant BNSF access to Lake Charles Area shippers in the first place.

1. The Data Clearly Shows That BNSF Has Been Able to Achieve a Substantial Presence in Lake Charles Area Demonstrating That BNSF Is an Effective Competitor Via Reciprocal Switch Service

Drs. Reynolds and Neels analyzed BNSF's effectiveness as a competitor by evaluating two essential indicators: current market shares and price. As demonstrated in Tables 1 and 2 to

⁴² The waybill sample is a stratified random sample of carload waybills for all U.S. rail traffic submitted by all rail carriers terminating 4,500 or more revenue carloads annually. In this proceeding, the STB provided Drs. Reynolds and Neels access to all of the waybill records corresponding to shipments either originating or terminating in the Lake Charles BEA Economic Area over the period from 1996 through 2013. See Reynolds/Neels VS at 3.

⁴³ Unlike the waybill sample, the data provided by the railroads represents a census of all traffic into or out of the area, while the data contains information on the tonnage shipped, it does not contain information on revenues or prices. See Id.

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the Reynolds/Neels VS, BNSF's market shares demonstrate that BNSF has been, and is, an effective competitor to UP and KCS. Indeed, as shown in Table 1, in 2012 and 2013, BNSF handled [REDACTED] of inbound tonnage, with UP handling approximately [REDACTED] and KCS handling the remaining traffic.⁴⁴ The fact that BNSF in two recent years handled [REDACTED] demonstrates that BNSF maintains a strong competitive presence in the Lake Charles area. Table 2 to the Reynolds/Neels VS breakdowns the outbound shares of rail traffic out of the Lake Charles Area by each carrier in 2012 and 2013.⁴⁵ BNSF [REDACTED] percent in both years, while UP handled slightly less than [REDACTED] of outbound traffic, and KCS handled the remainder. Tables 1 and 2, collectively, show that BNSF, which did not serve the Lake Charles area prior to implementation of the Lake Charles Condition, has grown from a zero share to [REDACTED] of inbound traffic, and a not an [REDACTED] share of outbound traffic. The data clearly shows that BNSF has flourished in a post-merger environment.

Table 3 to the Reynolds/Neels VS offers a comparison of Lake Charles Are market shares from 1996 to 2013 (the year of the most recent traffic data supplied by all three carriers).⁴⁶ While Table 3 shows that inbound and outbound Lake Charles area traffic percentages have fluctuated because of changes in shipper populations, railroad markets, and product markets, such variation is not surprising when you consider business operations spanning 17 years. Most importantly, Table 3, analogous to Tables 1 and 2, demonstrates that BNSF [REDACTED] [REDACTED] [REDACTED] Table 4, which summarizes

⁴⁴ Id at 4.

⁴⁵ Id at 5.

⁴⁶ Id. at 6.

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Clearly, the data shows that BNSF is already an effective competitor so that terminal trackage rights are not necessary to preserve any loss of competitive options that Lake Charles Area shippers may have incurred absent the Lake Charles Condition. Indeed, it is clear that not only did Lake Charles Area shippers have competition preserved, but this is one of the few markets where the UP/SP merger actually resulted in enhanced competition far beyond the competitive options that the shippers had prior to the merger. There is simply no need to grant BNSF additional rights for BNSF to provide the competition that the Lake Charles Condition was intended to preserve.

2. The Rate Changes Since the UP/SP Merger Indicate That BNSF Has Been Effective in Replacing Lake Charles Competition Lost as a Result of The UP/SP Merger

While market shares are perhaps the most important indicator of BNSF's competitive presence, Dr. Reynolds and Dr. Neels also evaluated the trend in rates in order to determine whether BNSF's rivalry has resulted in successfully maintaining competition as the Board intended by granting BNSF the right to handle traffic of Lake Charles Area shippers. If competition had been reduced, Lake Charles Area rates would have been expected to increase more than rail rates increased generally. In making this analysis, one would generally expect rail rates to rise during the period from 1997-2013, if only to keep up with general inflation and other cost and capacity pressures on the railroad industry. However, in determining whether BNSF's presence has resulted in maintaining competitive rates, what is important to focus upon is not on whether rates have increased or decreased, but rather, whether the rates increased or decreased relative to railroad rates in general. Reynolds/Neels VS at 14.

With respect to outbound rates, Drs. Reynolds and Neels determined that over the period from 1997 through 2013 rates on outbound routes [REDACTED]

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[REDACTED] | Id. By this measure, it does not appear that there has been any systematic upward trend in rates in the Lake Charles Area over the post-merger period so that one could argue that Lake Charles Area shippers are not receiving the benefits of rate competition between UP, KCS, and BNSF. Indeed, relative to industrywide price trends, rates on Lake Charles outbound routes have decreased slightly more often than they have increased.

Likewise, rates on inbound traffic show a similar trend. Over the period from 1997 through 2013, rates on inbound routes | [REDACTED]

[REDACTED] | Id. Relative to industrywide price trends, rates on Lake Charles inbound routes have | [REDACTED]

[REDACTED]

Based on Drs. Reynolds' and Neels' analysis, there is simply no indication in this alternative analysis of a broad and systematic upward trend in rates over the post-merger period so as to indicate that BNSF was not providing an effective competitive constraint. Indeed, overall, Drs. Reynolds and Neels conclude that relative to the general level of railroad rates, the rates paid by Lake Charles Area shippers have actually declined more often than they have increased. Id. at 15.

Since the approval of the UP/SP merger, BNSF has used the access it was granted to handle the traffic of Lake Charles Area shippers to establish itself as a significant competitor on routes into and out of the Lake Charles Area. In fact, BNSF handles a significant share of the overall Lake Charles Area rail traffic and of traffic on many important routes. According to Drs. Reynolds and Neels, from either a market share or rate perspective, there is nothing in the evidence to suggest any inability on the part of BNSF to fulfill successfully the competitive role

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that was envisioned by the STB when it imposed the Lake Charles Condition, and there is certainly no justification for granting terminal trackage rights to further enhance BNSF's competitive role.

B. Documents Produced In Discovery Establish That BNSF Is Already An Effective Competitor Without The Need For Terminal Trackage Rights

The conclusions of Drs. Reynolds and Neels are not merely empirical in nature, but are also buttressed by the documents that KCS was able to obtain through discovery. These documents corroborate Drs. Reynolds' and Neels' findings and demonstrate clearly that BNSF's switching and haulage access to the Lake Charles Area, and more specifically to customers along the Rosebluff Lead, has allowed BNSF to more than fill the competitive role of substituting for SP's service, especially in regards to CITGO. Indeed, prior to the merger, CITGO received service from only two carriers: SP and KCS. Yet, as a result of the Lake Charles Condition, CITGO's competitive options were actually increased and UP, BNSF, and KCS have all provided service to CITGO at one point or another. For example, in April 2014, Kathleen Seleny of BNSF indicated that [REDACTED]

[REDACTED] vie for CITGO's business.⁴⁹ As Drs. Reynolds and Neels showed, BNSF is actually the [REDACTED]

Not only does BNSF have the [REDACTED] market share of crude oil deliveries to CITGO, but it has used this market power to actually frustrate and potentially eliminate the competition provided by KCS for similar crude oil deliveries to CITGO. Documents produced by BNSF indicated that BNSF was concerned that [REDACTED]
[REDACTED];" BNSF did not want the competition

⁴⁹ See BNSF-C-0000096.

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so it planned to strategically use [REDACTED]

[REDACTED]⁵⁰ The same document indicated that aside from [REDACTED]

[REDACTED]⁵¹ BNSF also used its market power in a cynical move to attempt to establish the feasibility of moving unit trains to [REDACTED]

[REDACTED] BNSF's documents indicate that [REDACTED]

[REDACTED]

[REDACTED]⁵² Thus, not only can BNSF compete against KCS, but in at least the case of crude oil originating in [REDACTED], it was able to use its market power to manipulate the market to favor BNSF or KCS depending upon the desires of BNSF.

CITGO is by no means the only Lake Charles Area shipper to benefit from the strong competition provided by BNSF. In March 2014, BNSF and UP were involved in negotiations with [REDACTED] using the current haulage-to-reciprocal switch arrangement.⁵³ Notwithstanding that BNSF could only serve [REDACTED] via its haulage and reciprocal switching rights, BNSF competed and won the contract. Further, BNSF anticipated [REDACTED] despite only serving the customer via reciprocal switch.⁵⁴

According to documents produced by BNSF, the [REDACTED]

[REDACTED]

[REDACTED]

⁵⁰ See BNSF-HC-000649. Clearly, if anything, it was BNSF who was undertaking an anticompetitive action, not KCS.

⁵¹ Id.

⁵² See BNSF-HC-000667.

⁵³ See BNSF-HC-000146 RESP 01.

⁵⁴ Id.

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[REDACTED]⁵⁵ Even more compelling, BNSF was able to secure [REDACTED]
[REDACTED], despite being at what BNSF perceived as an economic disadvantage
to KCS.⁵⁶ Perhaps BNSF says it best, [REDACTED]

[REDACTED]⁵⁷ Additionally, in 2012, BNSF
projected it had a [REDACTED]

[REDACTED]⁵⁸ Collectively, [REDACTED] demonstrate that BNSF is actively
competing for Lake Charles Area traffic over the Rosebluff Industrial Lead. As of February
2015, according to BNSF's own estimates, BNSF has an estimated [REDACTED]

[REDACTED]⁵⁹

Not only is BNSF effectively competing against UP and KCS, but BNSF's market share
is more than likely to grow now that it has completed its Lacassine Yard. One need look no
further than BNSF's presentation entitled [REDACTED]

[REDACTED]. In 2012, BNSF's Rollin Bredenberg

[REDACTED]⁶¹ While, the slides indicate that BNSF believed that
the [REDACTED]

⁵⁵ See BNSF-HC-000308.

⁵⁶ See BNSF-HC-000702.

⁵⁷ See BNSF-HC-000787.

⁵⁸ See BNSF-HC-000703.

⁵⁹ See BNSF-HC-000696.

⁶⁰ See BNSF-HC-001597 through BNSF-HC-001613.

⁶¹ See BNSF-HC-001600.

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[REDACTED]
[REDACTED]⁶²

Other internal BNSF documents also corroborate this point. One document shows that BNSF itself believed that [REDACTED]

[REDACTED]⁶³ Additional documents indicated that [REDACTED]

[REDACTED]

[REDACTED]⁶⁴ None of the customers cited BNSF's inability to directly serve them via trackage rights as the reason for not considering BNSF service.

As a result of these concerns, in 2012, BNSF's Strategic Studies team determined that

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]⁶⁶

⁶² See BNSF-HC-001604.

⁶³ See BNSF-HC-000400

⁶⁴ See BNSF-HC-000410

⁶⁵ See BNSF-HC-001607.

⁶⁶ See BNSF-HC-001609.

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BNSF's conclusions and analysis appear to be correct because as seen in BNSF's own [REDACTED]⁶⁷ presentation, it was the building of the [REDACTED] [REDACTED] Id. In fact, as of February 2015, BNSF retained the [REDACTED] business and added an additional [REDACTED] revenue units. BNSF is also optimistic that it because of its new infrastructure investments, it will take [REDACTED] [REDACTED] Id.

Thus, the discovery documents produced by BNSF clearly show that BNSF has been, and can continue to be, an effective competitor for Lakes Charles Area traffic without the terminal trackage rights access it is requesting in this proceeding. While BNSF continues to insist that its ability to serve CITGO or other shippers has been impaired due to its inability to provide terminal trackage rights and that it needs terminal trackage rights to fulfill the competitive role envisioned by the Lake Charles Condition, the documents it produced tell a different story. These documents show that BNSF is a very effective competitor and that to the extent there were any problems serving CITGO or other shippers, such problems were largely due to BNSF own refusal to invest in adequate infrastructure and not its inability to operate under terminal trackage rights. Of course that failure has largely been eliminated by the building of its Lacassine yard. The building of that yard will make BNSF even more competitive, further mitigating any claim that BNSF needs terminal trackage rights to compete with KCS and UP.

C. Any Service Or Other Problems Experienced By CITGO Were Not Due To The Inability Of BNSF To Operate Under Terminal Trackage Rights

With regard to CITGO in particular, CITGO offers support for BNSF's Application by claiming that BNSF's terminal trackage rights would "better serve the existing and future needs

⁶⁷ See BNSF-HC-001612.

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of the CITGO refinery.” CITGO Petition To Intervene at 3. It is important to note, however, that CITGO did not say BNSF was unable to compete for its business, nor could it make that statement since BNSF moves a [REDACTED] amount of CITGO inbound crude oil. CITGO also provides no evidence to back up its claim that BNSF terminal trackage rights would “better service” its needs.

At most, CITGO and BNSF make a half-hearted attempt to claim that BNSF is not providing adequate service, when CITGO claims that “its service needs were not being satisfied by UP,” CITGO 9/4/14 Letter, and BNSF claims that BNSF service via reciprocal switch by UP had become increasingly unsatisfactory for CITGO so that direct physical service by BNSF was now required. BNSF Opening at 9. Those statements do not prove that BNSF terminal trackage rights access would resolve CITGO’s concerns. Indeed, when one examines the record and the documents produced in discovery, it is clear that the alleged service deficiencies [REDACTED]

[REDACTED].⁶⁸ Given the inherent limitations in CITGO’s infrastructure, neither CITGO nor BNSF has shown that BNSF terminal trackage rights service would “better serve” the needs of CITGO.

Indeed, whatever past service problems there have been during 2012 through 2014, such problems were not UP’s or KCS’s fault, but were self-inflicted by CITGO. At the time BNSF’s request for terminal trackage rights to CITGO was filed, UP reported the CITGO facility’s current track structure could only accommodate [REDACTED] railcars per day and [REDACTED] cars a month. Such limited facilities would obviously not be adequate to service [REDACTED] car unit trains of

⁶⁸ See BNSF-HC-000066, BNSF-HC-000068; BNSF-HC-000103 through BNSF-HC-000110; BNSF-HC-000120; BNSF-HC-000120 through BNSF-HC-000136; and BNSF-HC-000215, BNSF-HC-000262.

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crude oil and BNSF knew it. A [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] ⁶⁹ Yet, despite CITGO's [REDACTED]
[REDACTED] CITGO's unloading capacity remained at [REDACTED], though BNSF again
indicated that CITGO expected to [REDACTED] ⁷⁰
September of [REDACTED] came and went with CITGO's unloading capacity remaining at [REDACTED], but
there were indications that capacity could be increased to [REDACTED] if all went well in the [REDACTED]
[REDACTED] ⁷¹

From the time BNSF first notified UP that it desired to operate trains direct to CITGO,
until sometime in [REDACTED], the CITGO facility was unable to [REDACTED]
[REDACTED] As of [REDACTED]
[REDACTED]
[REDACTED] ⁷² Interestingly, that e-mail confirms not only that [REDACTED]
[REDACTED]
[REDACTED] Id. The same e-mail indicates that if [REDACTED]
[REDACTED]
[REDACTED] Id. These documents clearly
establish that because [REDACTED]
[REDACTED] and that any

⁶⁹ See BNSF-HC-000022.

⁷⁰ See BNSF-HC-000098.

⁷¹ See BNSF-HC-0000101.

⁷² See BNSF-C-0000096.

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congestion and service problems were not the fault of UP switching, but were a consequence of CITGO [REDACTED]

Despite [REDACTED]

[REDACTED]

[REDACTED]⁷³ In fact at one point, CITGO's

operations were so [REDACTED]

[REDACTED]⁷⁴

Again, this shows that contrary to what BNSF may like the Board to believe, CITGO's service

issues in [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷⁵

Other documents also show that it was [REDACTED] – not BNSF's lack of terminal trackage rights - that significantly contributed to CITGO's service issues. As noted by BNSF, for years, CITGO has had a tendency [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷³ See BNSF-HC-000098, and BNSF-HC-000105.

⁷⁴ See BNSF-HC-000105.

⁷⁵ See BNSF-HC-000068; BNSF-HC-000103 through BNSF-HC-000110; BNSF-HC-000120; BNSF-HC-000120 through BNSF-HC-000136; and BNSF-HC-000215.

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[REDACTED]⁷⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷⁷ He went on to say that the presence of [REDACTED]

[REDACTED] Id.⁷⁸ In April 2013,

[REDACTED]

[REDACTED]⁷⁹ These statements directly confirm that in addition to the lack of adequate unloading capacity at the CITGO facility, CITGO's car ordering practices play a significant part in its rail transportation woes.

In summary, the documents produced in discovery clearly demonstrate that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Contrary to BNSF's claims, BNSF's inability to take cars directly to CITGO's facility via terminal trackage rights is not the underlying problem affecting CITGO's operations. The various documents produced by both BNSF and CITGO do not say that a lack

⁷⁶ See BNSF-HC-000066.

⁷⁷ See BNSF-HC-000262.

⁷⁸ Under Section 11102, it is BNSF's burden to show that its operations do not interfere with KCS's operations, not the other way around.

⁷⁹ See BNSF-HC-000082 and BNSF-HC-000086 RESP 06. [REDACTED]

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of competition between UP, BNSF, and KCS was the reason for CITGO's service problems. As such, the notion that BNSF operating its own trains to the CITGO facility is necessary to serve CITGO and is required for CITGO to have an effective competitive option is simply not borne out by the documents. In fact, as discussed below, BNSF physical access to CITGO will only complicate matters further and will actually cause more operational problems for UP and KCS, not less.

In the end, BNSF has not met the strict public interest standard of 49 U.S.C. 11102(a). BNSF has not met the Midtec standard, although that is the appropriate standard. BNSF has also not established that its request fits within the narrow "bridge the gap" exception to Midtec which has been applied in merger proceedings to connect long segments of overhead trackage rights. BNSF has not met the service inadequacy test either. Even if one applies BNSF's vague and legally unprecedented general public interest standard, i.e. that BNSF direct physical access is required for it to fulfill the competitive role that the Board envisioned it to fulfill, BNSF fails that standard as well because BNSF has served shippers in the Westlake/West Lake Charles area for nearly nineteen years, and as Drs. Reynolds and Neels show, has done so very effectively.

The evidence of competition in this case shows that BNSF does not require terminal trackage rights to compete and that BNSF direct physical access to Lake Charles Area shippers is not "critical" to BNSF's ability to serve the shippers. Rather, this is simply a case of BNSF and CITGO attempting to obtain more access than the Board required and to do so at the expense of KCS, UP, and the many customers they serve on the Rosebluff Lead. The trackage rights BNSF seeks are not in the public interest.

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IV. BNSF'S PROPOSED OPERATIONS OVER THE ROSEBLUFF INDUSTRIAL LEAD ARE NOT PRACTICABLE AND WOULD IMPAIR KCS'S ABILITY TO SERVE ITS EXISTING SHIPPERS

Under Section 11102, not only must BNSF's request for terminal trackage rights be in the public interest as those words have been defined through regulation and case law, but BNSF must also show that its proposed operation is "practicable...without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business." 49 U.S.C. §11102(a). As with the public interest element, BNSF, as the party requesting relief from the Board under Section 11102(a), has the burden of proving that its proposed operations meet this test.

Under Section 11102(a), BNSF must show that its proposed operation is (a) "practicable," and (b) will not "substantially impair the ability of [KCS and UP] to handle [their] own business." Here, BNSF has failed in at least the following respects to meet the statute's requirements to show that its proposed operation is practicable and won't substantially interfere with KCS's existing service:

- (a) BNSF's proposal is based on incorrect factual assumptions;
- (b) the proposed operation is described too vaguely to show that it is practicable or will not interfere;
- (c) the description of the proposed service is manifestly incomplete, particularly by offering no shipping volumes and offering no description of how BNSF would propose to serve the many shippers other than CITGO on the Rosebluff Lead to which it seeks access; and
- (d) the operation described is incompatible with current operations on the Rosebluff Lead.

A. BNSF's Proposal Requiring Operating Windows and Open Tracks Would Substantially Interfere with KCS's Service to Shippers

BNSF believes that UP and KCS can create an unknown number of 'windows' through Rosebluff Yard and along several miles of the Rosebluff Lead so that BNSF can travel without

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interruption the nearly 25 miles from Lacassine Yard to CITGO in 30 to 45 minutes. Aside from its unobtainable speed, this plan would either force KCS to leave a track open during KCS's operations in Rosebluff Yard, or to clear out of Rosebluff Yard early. Either would substantially harm KCS's service to shippers.⁸⁰

1. There Is No "Operating Window" Available To BNSF

As an initial matter, BNSF starts from the incorrect factual premise that the 5 a.m. to 7 a.m. time period is wholly within the period allocated to UP to operate in Rosebluff Yard, and as such, BNSF service would not interfere with KCS.⁸¹ This premise is wrong. "KCS's planned operating period [in Rosebluff Yard] is from 1800 hours to 0600 hours (that is, overnight, 6 p.m. to 6 a.m.)." Scott VS at 5. In fact, the 5:00 a.m. to 7:00 a.m. "window" that BNSF imagines seldom exists. KCS's operation often extends beyond 6:00 a.m., predominantly due to delays beginning in its 12-hour operating period or due to unforeseen circumstances causing delays. *Id.* at 9-10. Mr. Scott's statement shows that in the 62 days studied by KCS, the start of KCS's 12-hour operating period in Rosebluff Yard was delayed more than an hour on 40 of those days. Most of those delays were more than 2 hours, and one as much as 6 hours. *Id.* at 7-8. When KCS is delayed in starting its operations in Rosebluff Yard, it usually is delayed in completing them also. Consequently, Mr. Bartoskewitz says that in the periods studied, "about 60-65% of the time, the "window" BNSF imagines for entering the Rosebluff Lead does not even exist." Bartoskewitz VS at 6.

⁸⁰ The plan would also, KCS believes, force UP to spend much time and effort rearranging its operations in Zone 2, south of Rosebluff. KCS anticipates that UP's filing will explain these obstacles.

⁸¹ Bredenberg VS at 7, referring to a proposal from UP to allow BNSF to operate "between 5am and 7am" as "a two-hour window...during UP's 12-hour operating period."

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Because the two-hour "window" BNSF seeks normally does not exist, it would have to be manufactured by cutting short KCS's service to existing shippers that are served from Rosebluff Yard. Accordingly, BNSF's claim that "BNSF's direct train service . . . [would occur] during UP's 12-hour operating period" (See BNSF Opening at 7) is wrong. In fact, BNSF's plan would force KCS to cut short its service to shippers adjacent to Rosebluff Yard two-thirds of the time. Cutting at least one, but ordinarily several hours from KCS's 12-hour operating period in Rosebluff Yard will have substantial adverse impact on KCS's service. Verified Statement of Steve Sullivan and John Ireland of R.L. Banks & Associates ("Sullivan/Ireland VS") at 16.

2. There Is No Available Track Space To Accommodate BNSF Trains While KCS Is Operating

Unless KCS terminated its switching in Rosebluff Yard early, harming shippers, KCS would have to try to keep a track open for BNSF. Doing so would harm KCS's flexibility and efficiency in serving shippers and its ability to finish its operation in Rosebluff Yard. Rosebluff Yard is a tightly constrained operating environment. Holding tracks open for BNSF to pass through would substantially interfere with KCS's ability to do the work it needs to do in Rosebluff Yard.

As described by Mr. Jimmy Scott, KCS's Senior Trainmaster with responsibility for the Lake Charles Area, KCS crews use all of the tracks in Rosebluff Yard for their operations. Rosebluff Yard consists of six tracks, each about a mile long. The yard is bordered by Interstate 10 on one side and Pete Manena Road on the other, with four highway ramps passing over the western portion of the yard and connecting track. There also are two small storage tracks a short distance west of the yard.⁸² Exhibit 4 to Mr. Scott's statement is a schematic

⁸² KCS personnel commonly refer to the portion of Rosebluff Yard nearest the 50/50 Line as the east end and the portion connecting to Zone 2 as the west end. Rosebluff Yard runs generally

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representation of Rosebluff Yard and adjacent trackage, taken from KCS's Spot Location and Inventory Control ("SLIC") Book.

UP and KCS allocate which tracks in Rosebluff Yard each can use to hold cars, but when the carriers perform switching in the yard, they often use all of the tracks in the yard. KCS uses the tracks in Rosebluff Yard for many purposes, including -

- to bring cars being interchanged to UP from customers in Zone 1 or for delivery to customers in Zone 2;
- for UP to deliver cars to KCS to be switched to customers in Zone 1 or from customers in Zone 2;
- to hold cars until needed by customers;
- to switch cars between various tracks while collecting them from or distributing them to customers adjacent to Rosebluff Yard; and
- for gathering cars to be moved to Mossville Yard or to UP's Lake Charles Yard for movement out of the area or to storage.

For example, KCS's crew job RLC210 is the earlier of the two KCS jobs that works Rosebluff Yard. Scott VS at 6-7. It is scheduled to enter Rosebluff Yard at 1800 hours (6:00 p.m.), though more often than not it is delayed more than an hour (sometimes several hours) waiting for UP to give clearance that its last job has vacated Rosebluff Yard. Id. at 7. RLC210 waits in KCS's Mossville Yard, between 2 and 3 rail miles from Rosebluff Yard, for UP to vacate Track 4 so that KCS can pull into the yard. Id. at 6.

KCS Job RLC210 will use all tracks in the yard during its operation. Id. at 6. After the last UP job working the west end of Rosebluff Yard has made sure that Track 4 is clear and has departed the yard, RLC210 will pull into Track 4. Id. at 6. It will then switch the cars in Tracks 1, 2 and 3 (cars that are either (a) received in interchange from UP, held for customers, or

northeast to southwest. See Scott VS, Exhibit D. A 1981 KCS-SP agreement divided the KCS-SP joint facilities into two zones, each to be switched by one of the 2 carriers. That agreement designates Rosebluff Yard as the predominant interchange for traffic moving to and from shippers Zones 1 and 2.

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moving to or from the customer facilities adjacent to Track 1), and set out cars for interchange to UP to Track 5 or 6. These operations utilize all tracks in the yard at various times. Id. at 6. This job will also work Certainteed, which breaks off of Track 1, and BW Services, which breaks off #3 Storage Track at the southwest end of the yard. RLC210 also sets PPG Cars and Axiall Cars in Track 1 for the RLC304 job to switch upon completion of RLC210's tour of duty. Id.

KCS's other crew job, RLC304, comes on duty at 2359 hours, and is transported by cab to Rosebluff Yard. Id. There, it uses the same locomotives which RLC210 used to complete its work. Id. RLC304 switches additional customer facilities served off of Track 1. Specifically, RLC304 will pull Axiall A plant cars and shove them into Track 4. It will then get cars out of Track 1 and work Axiall A Plant, Axiall B Plant, Tetra and the PPG C Plant. Id. Once complete, RLC304 will take cars remaining in Track 1 to Track 4 to assemble its train going back to Mossville Yard. In so doing, it will leave Tracks 1 and 4 clear to receive inbound jobs from UP out of Zone 2 and UP's Lake Charles Yard. Id. at 6-7. As shown by the Sullivan/Ireland VS, the first UP train to arrive in Rosebluff Yard after RLC304 departs occupies Track 4, while the UP train bringing cars for interchange to KCS occupies Track 1 when it arrives from UP's Lake Charles Yard. Id. at 7.

Having to create two-hour windows or to empty tracks for BNSF would substantially interfere with these operations and would destroy the essential flexibility and coordination that KCS and UP have developed in operating Rosebluff Yard. Mr. Scott and Mr. Bartoskewitz both show that a majority of the time, the transfer of operations from UP to KCS and vice-versa does not occur at the planned time. Instead, the carriers work with each other and eventually get back on schedule, at least for a short while. Having to accommodate an unknown number of fixed

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windows for BNSF would destroy this needed flexibility, and force KCS and UP to cut short their service to shippers to make way for BNSF.

B. BNSF Is Purposely Vague About Volumes and Frequency of Window Demands, In An Attempt to Hide the Level of Interference Its Proposal Would Cause

BNSF is purposely vague in describing its proposed operation, hoping to hide the damage the operation would cause. BNSF's statement that its proposed operation "will closely resemble" a six-sentence e-mail that BNSF labels the "BNSF Citgo Crude Operating Plan" provides virtually no information about how BNSF would operate. See BNSF Opening, Bredenberg VS, Exhibit F. What "closely resemble" means is anyone's guess, since it is BNSF's position that "Any operational accommodation ... should not be construed as 'interference'."⁸³ At the very least, "closely resemble" means the operation would deviate in unspecified ways from the description in the UP e-mail which BNSF labels as its operating plan.⁸⁴

BNSF also hides the impact of its proposed operation by omitting any mention of existing or proposed shipping volumes. BNSF proposes to require KCS and UP to manufacture two-hour clear windows for BNSF to operate, but how often? BNSF says nothing about how many trains it proposes to operate to and from CITGO. Maybe BNSF plans to operate "every other day to spot and pull" as stated in the e-mail BNSF calls an operating plan. Or maybe BNSF plans something that would "closely resemble" every other day. If so, that would require KCS to stop serving its shippers early at least 10-15% of the time, as 60-65% of the time KCS's

⁸³ BNSF Reply to 2nd Motion at 7.

⁸⁴ In fact, had BNSF persisted in attempting to execute the plan in that e-mail by [REDACTED]
[REDACTED] See KCS-C-0292.

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Rosebluff operations do not end by the time the window BNSF wants would have to begin. Bartoskewitz VS at 6.

BNSF also fails to mention that under the terms of the BNSF Settlement Agreement, it cannot limit its operation to unit trains. If Section 5(c) of the Restated and Amended BNSF Settlement Agreement applied, as Mr. Weicher claims,⁸⁵ BNSF operations would not be limited to unit trains. Rather, BNSF would have to take all traffic it received for CITGO, in whatever volumes, to CITGO. Section 5(c) of the BNSF Settlement Agreement provides that access to 2-to-1 facilities "shall be direct *or* through reciprocal switch," not both. Under the agreement that BNSF claims to be enforcing, UP would no longer provide reciprocal switching for any CITGO traffic if BNSF were able to exercise direct trackage rights. Thus, not only would BNSF need windows to haul unit trains to CITGO, it also would need windows to haul 5-car "CITGO Direct Trains" or 2-car "CITGO Direct Trains," whatever volumes BNSF might be obligated by its common carrier obligation and CITGO's ordering practices to handle. Based upon KCS's experience, CITGO historically has been a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The same holds for any other customers on the Rosebluff Lead that BNSF would seek to serve.

⁸⁵ As noted previously, Mr. Weicher's claims about the BNSF Settlement Agreement contradict the plain language of that agreement. The BNSF Settlement Agreement does not apply to the Rosebluff Lead because CITGO is not covered by the direct language of Section 5(c) and Rosebluff Lead is not listed in Exhibit A to the BNSF Settlement Agreement.

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C. BNSF's Plans To Serve Other Shippers Would Also Create Substantial Interference With KCS's Operations

Although BNSF makes almost no mention of the subject, BNSF's Application also appears to ask for authority to serve many other shippers in addition to CITGO. For example, BNSF claims that it proposes "to provide direct service to the CITGO facility and to other customers in the terminal area" (emphasis supplied). BNSF Opening at 7. Thus, if BNSF were granted access to other shippers as well, which it should not be,⁸⁶ the operational interference that would result from BNSF's proposed service to CITGO would also be multiplied several fold as BNSF would be required to take every car that it receives for every shipper on the Rosebluff Lead to that shipper directly, requiring KCS and UP to create a two hour window for each such shipment.

Documents produced in discovery clearly establish that BNSF desires to [REDACTED]

[REDACTED]

[REDACTED] to serve just

CITGO. In [REDACTED]

⁸⁶ As BNSF directs its Application at serving CITGO and presents no operational or public interest analysis directed at serving other shippers, BNSF has failed to establish a prima facie case for serving other shippers. The Board should summarily deny BNSF's request to serve any shippers other than CITGO.

Further, if the Application is not denied in its entirety, as it should be, the only rights the Board could grant would be limited to CITGO common carrier traffic only, and only under the same conditions that KCS can deliver unit trains to CITGO. This is the position BNSF itself took in the Ex Parte No. 711 proceeding where it said "no proposal can be considered that would apply to traffic that the STB does not have jurisdiction over, including exempt and contract traffic." Ex Parte No. 711, BNSF Opening Comments at 6. BNSF's reply comments in that proceeding reemphasized this, stating the "Board must acknowledge in reviewing the evidence submitted in this proceeding that it would not be lawful to extend mandated switching [which is the same statutory provision applicable to BNSF's Application here] to traffic that is not subject to the Board's jurisdiction." Ex Parte 711 BNSF Reply Comments at 4-5. Accordingly, BNSF would not be entitled to use any rights obtained in this proceeding to access either exempt traffic, traffic subject to contracts, or any other non-jurisdictional traffic.

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[REDACTED]⁸⁷ In fact, BNSF reported that there was [REDACTED]

[REDACTED]

[REDACTED]⁸⁸. Other documents show that it plans to use its [REDACTED]

[REDACTED]⁸⁹, In a [REDACTED], BNSF stated that it hoped to [REDACTED]

[REDACTED]

[REDACTED] expansion.⁹⁰ Even clearer is a series of e-mails from April 2013 indicating that there are [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The same series of e-mails addressing potential customers BNSF desires to serve includes an e-mail from [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Id.⁹¹

⁸⁷ See BNSF-HC-000001

⁸⁸ See BNSF-HC-000007

⁸⁹ See BNSF-HC-000052.

⁹⁰ See BNSF-HC-000052 to BNSF-HC-000054.

⁹¹ See BNSF-HC-000270 to BNSF-HC-000274.

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Similarly, in a [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] ⁹² Other documents BNSF produced indicate that the primary purpose of the [REDACTED]

[REDACTED] Id. Further, the document indicates that the [REDACTED]
[REDACTED]
[REDACTED] Id.

Although not explicitly stated in the Application, BNSF appears to believe that a grant of terminal trackage rights would give them access to all other shippers on the Rosebluff Lead in addition to CITGO. Yet, BNSF does not even attempt to satisfy the Section 11102 standards for serving such other shippers. BNSF makes no attempt to show that serving any shipper other than CITGO is in the public interest or that such service would not substantially interfere with UP or KCS's operations. It certainly offers no operating plan to do so. Its limited operational evidence pertains to only one -- CITGO. Its Application is entirely devoid of information about how it proposes to serve these other customers that it seeks to access, how many such customers there are, how often they would require service, what size 'direct train' would be required to serve them, or whether such service would interfere with KCS's operations. How many two-hour windows BNSF would require UP and KCS to create for BNSF to operate trains like the "CITGO Direct Train" to other customers on the Rosebluff Lead is unknown.

⁹² See BNSF-HC-000146 RESP 01.

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As shown in preceding portions of this pleading, even service to just CITGO would severely disrupt KCS' service to all other customers on the Rosebluff Lead and elsewhere in the Lake Charles Area. Expanding service to a multitude of other customers would create even more disruption. BNSF has presented no evidence of how many two-hour operating windows it would demand if given the blank check it is asking for from the Board. Because there could be many 'CITGO Direct Trains' of all sizes, and an unknown number of 'Other Shipper Direct Trains,' each requiring KCS to stop its service to shippers early or to refrain from using tracks in the Rosebluff Yard, BNSF's proposal would substantially impair KCS's existing service. BNSF's Application to serve CITGO, and if applicable, any other shipper, should accordingly be denied.

D. Other Deficiencies of the "BNSF CITGO Crude Operating Plan"

Even to the limited extent articulated by BNSF, its operating plan is not workable. Rather, it is based on unrealistic assumptions. One such unrealistic assumption, as discussed above, was that its proposed service would be conducted during the twelve hours UP operates in Rosebluff Yard. That assumption was wrong – the schedule proposed would mostly interfere with KCS' Rosebluff operations. Another unrealistic assumption is that an operating window can be manufactured for BNSF without affecting KCS's service to customers. That assumption also is wrong. A third unrealistic assumption is BNSF's assumption about how long it would take to travel approximately 25 miles from its Lacassine Yard to CITGO's facility. Mr. Bredenberg describes that journey as taking between 55 and 70 minutes, "if BNSF had a clear route." Bredenberg VS at 7 – 8. However, he does not show that BNSF would have a clear route over the 50/50 Line, with its frequent traffic, Amtrak service and swing bridge over the Calcasieu River that is required by law⁹³ to open for river traffic over which the railroads have no control.

⁹³ See 33 U.S.C. §499.

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BNSF also assumes an unreasonably quick transit over the Rosebluff Lead. Mr. Bredenberg projects 25 minutes to traverse approximately 5 miles between entering the Rosebluff Lead and pulling BNSF's train completely into CITGO's facility. *Id.*, at 8. As Mr. Scott states, the maximum operating speed on the Rosebluff Lead is 10 miles per hour. Scott VS at 4. So, assuming maximum operating speed, it would take 30 minutes, not 25, to traverse the 5 miles.

Furthermore, as Mr. Scott explains, speeds on the Rosebluff Lead are usually much less than 10 miles per hour due to General Code of Operating Rules ("GCOR") Rule 6.28. GCOR Rule 6.28 requires that a crew be able to stop its train within one-half the distance that the crew can see. So, at night, when visibility is more limited, speeds are slower. When it is rainy or foggy, speeds are slower. And the bigger and heavier the train - like the unit oil trains BNSF projects - the slower the train must be operated to be able to stop within one-half the distance that the crew can see. It is not uncommon, therefore, for operations to be conducted at 2 or 3 miles per hour, particularly at night or in bad weather. Scott VS at 4. Clearly, BNSF's projected transit time between Lacassine and CITGO is not realistic and could easily take more than the two- hour phantom window that BNSF presumes to exist.

E. Having Failed To Meet Its Burden On Operational Issues In Its Application, BNSF Should Not Be Allowed To Provide Another Plan In Rebuttal

As shown above, BNSF submitted a vague, unworkable two-page description of proposed operations, which is meant to form the basis for serving CITGO and possibly all other shippers on the Rosebluff Lead as well. At best, BNSF has presented a superficial and inaccurate operational analysis of the impacts of BNSF providing direct service to CITGO, completely omitting any operational data for the impact of its service to other shippers.

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Presumably, after reading KCS's and UP's critique of its operating plan, BNSF will submit new and/or different operating proposals in its rebuttal, claiming that such proposals are legitimate rebuttal to operational issues raised by KCS and UP. They are not. BNSF has the burden of proof in this proceeding. BNSF proposed to begin this operation in December 2012, two full years before filing its evidence. BNSF claimed to be ready in 2012 to operate without interfering with KCS's operations. We now know, with the passage of time, that due to the CITGO facility operational limitations and CITGO's own ordering practices, it would have been impossible for BNSF direct service to CITGO not to substantially interfere with KCS service. Yet, nearly two years after filing its application, BNSF's operating proposal is basically a statement that its operations "will closely resemble the 'BNSF CITGO Operating Plan' proposed by UP on December 18, 2012". Bredenberg VS at 7.

The 'BNSF CITGO Operating Plan' that BNSF's proposed operation supposedly will "closely resemble" is a 2-paragraph section of an e-mail from UP to BNSF, prepared without any coordination with KCS. BNSF had plenty of time to develop a detailed operating plan between December 2012 and December 2014. It did not. Now, after reading KCS's detailed critique of its vague plans, BNSF should not be allowed to revise its plans on rebuttal, which would in effect, allow them to resubmit a new operating plan.

As the Board has previously stated, the party with the burden of proof – in this case, BNSF – must establish, in its case in chief, all of the elements necessary to carry that party's burden of proof:

We remind parties that, in presenting evidence, the party with the burden of proof on a particular issue must present its entire case-in-chief in its opening evidence. Rebuttal presentations are limited to responding to the reply presentation of the opposing party. Rebuttal may not be used as an opportunity to introduce new evidence that could and should have been submitted on opening to support the

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opening submissions. New evidence improperly presented on rebuttal will not be considered.

General Procedures For Presenting Evidence In Stand--Alone Cost Rate Cases, STB Ex Parte No. 347 (Sub-No. 3), slip op. at 5 (STB served Mar. 12, 2001) (addressing the standards for the admission of rebuttal evidence in stand-alone rate cases). So far, BNSF has failed to satisfy its burden of showing that its operations would not interfere with KCS's service to CITGO and other shippers. This alone justifies denial of the Application. BNSF should not be allowed to submit substantially different or expanded plans on rebuttal just because KCS and UP show how badly BNSF's December 2014 Application falls short.

V. THE BOARD SHOULD DENY BNSF'S APPLICATION BECAUSE ITS COMPENSATION PLAN FAILS TO SATISFY SECTION 11102.

BNSF claims that if it is granted access, it is not required to compensate KCS for use of KCS's property. Rather, BNSF says UP should compensate KCS. BNSF also claims that any dispute about whether or what UP (supposedly) would pay KCS should not interfere with BNSF's immediate access. BNSF Opening at 21-22. BNSF's position wholly fails to meet the statutory requirements of Section 11102.

Section 11102(a) is clear regarding compensation:

The rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the rail carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier under this section.⁹⁴

BNSF offers no compensation to KCS, but it is required to do so and to have the compensation arrangements made before operations begin. KCS does not know whether or not UP and BNSF have agreed to compensation between them, but BNSF and KCS have no such agreement. As a

⁹⁴ 49 U.S.C. § 11102(a).

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joint owner of the facility, KCS is entitled to compensation being set and paid or adequately secured before any BNSF train operates on KCS property.

Even if BNSF's deficient Application were granted, Section 11102(a) requires "the rail carriers" to agree on compensation for use of the terminal trackage or for the Board, in the absence of an agreement, to set such terms. The track owner and the terminal trackage user are the "rail carriers" referred to in Section 11102(a).⁹⁵ KCS is an owner of the Rosebluff Lead. Therefore, no agreement between just UP and BNSF satisfies the statute.

BNSF's assertion that the trackage rights fee agreed between UP and BNSF is satisfactory compensation also does not comport with Section 11102(a). Not only was that agreed only between UP and BNSF,⁹⁶ it also was not established "under the principle controlling compensation" as set forth in Section 11102. Instead, the compensation BNSF proposes to pay to UP was the same amount of compensation that was to govern BNSF's extensive scope of trackage rights – not terminal trackage rights. As Decision No. 44 stated:

UP/SP has explained that the compensation terms agreed to with BNSF, which we have found to be lower than what we would impose under SSW Compensation, were a component of a far broader arrangement through which UP/SP received other rights in return.^[FN 33] While these other rights were not necessary to satisfy our concerns over merger-related competitive harm, they are generally procompetitive and confer significant value to UP/SP.

^{FN33}. Among the benefits UP/SP received from BNSF as components of this arrangement were: (1) trackage rights between Chemult and Bend; (2) trackage rights between Mojave and Barstow; (3) a proportional rate agreement for traffic moving over the Portland gateway; (4) improved access to the ports of Seattle, Portland, and Superior; and (5) new

⁹⁵ "The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, to be used by another rail carrier,..." 49 U.S.C. § 11102(a), first sentence.

⁹⁶ Also, KCS pays a considerably higher trackage rights fee to UP for KCS's access over UP lines than BNSF does for its access.

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connections between UP/SP and BNSF in Illinois to permit more efficient access to UP/SP's facilities in Chicago.

See Decision No. 44, slip op. at 17, and UP/SP-272 at 16.

Accordingly, the Board has found that the trackage rights fee on which UP and BNSF agreed did not represent all the compensation UP received under the BNSF Settlement Agreement⁹⁷ and it certainly didn't represent compensation to be paid in a terminal trackage rights proceeding. Clearly, the compensation agreed on by UP and BNSF was not established "under the principle controlling compensation in condemnation proceedings," as required by Section 11102(a). BNSF's proposal that the Board impose the trackage rights fee agreed between BNSF and UP for the predominantly overhead trackage rights granted under the BNSF Settlement Agreement is contrary to the statute in many ways, and should be denied.

The statute also clearly does not allow granting BNSF's request to operate without first paying or adequately securing compensation. BNSF's request to be granted access to the Rosebluff Lead without compensation being first determined, paid or even secured is little more than a request to be authorized to take KCS's property without negotiating with KCS, without paying KCS, and without coordinating with KCS.

While BNSF claims that a delay in beginning trackage rights operations would prejudice CITGO, for several reasons, it would not. First, CITGO already has commercial access to BNSF and has had for nearly nineteen years now. Second, BNSF has pricing authority directly to the CITGO facility, and UP, as the carrier physically serving CITGO, provides a switch from the CITGO facility to the nearest interchange point with BNSF. Third, we know from the documents produced in discovery and the analysis of Drs. Reynolds and Neels that the lack of

⁹⁷ Decision No. 47, 1996 WL 512020 at *15. The Board's quoted analysis also does not mention that the BNSF Settlement Agreement eliminated BNSF's opposition to UP's application, itself a great value to UP.

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BNSF's ability to serve CITGO via terminal trackage rights has not caused either service or competitive problems for CITGO. Of course, it should not be overlooked that BNSF waited more than sixteen years after the UP/SP merger to even begin this proceeding. BNSF's claim that it must be allowed to begin service to CITGO without compensating KCS because CITGO will be prejudiced by any delay is simply unsupported, as well as unlawful.

VI. BNSF'S REQUEST FOR A SECTION 11321(A) OVERRIDE SHOULD BE DENIED

Apparently recognizing that its Application fails to satisfy Section 11102(a), BNSF claims that the Board should override the terms of the KCS-UP joint facility agreements pursuant to 49 U.S.C. §11321(a). That statute provides in pertinent part that "A rail carrier, corporation, or person participating in that approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, *as necessary* to let that rail carrier, corporation, or person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction." (Emphasis added.)

BNSF's request for an override under Section 11321(a) should be denied. An override cannot be considered "necessary," or even invoked, if a terminal trackage rights remedy is available.⁹⁸ The Board, in the context of BNSF's request for terminal trackage rights over the UP and KCS owned terminal tracks, can only invoke its override authority if doing so was "necessary" to implement the UP/SP merger transaction. To assert nearly 20 years after UP and SP merged and nearly nineteen years after BNSF began serving CITGO via switching and

⁹⁸ See Decision No. 44, slip op. at 170 & n.217; and CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operation Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation, 3 S.T.B. 196, 1998 STB LEXIS 1559, *228-229 (1998) ("CSX/NS") (refusing to invoke its override authority to override an anti-assignment provision in contracts governing joint facility terminal tracks and requiring CSX to file a terminal trackage rights application if it desired to operate over the terminal tracks owned by a non-applicant carrier).

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haulage rights that new terminal trackage rights are “necessary” for UP and SP to implement the transaction and the Lake Charles Condition – particularly considering BNSF’s already strong competitive position in the Lake Charles Area and for CITGO in particular – makes a mockery of the term “necessary.”

Furthermore, this issue was already addressed in Decision No. 63. There, the Board previously rejected a request by BNSF to override the joint facility agreements governing the Rosebluff Lead and other Lake Charles Area joint facility trackage:

[A]n override cannot be considered "necessary" if a terminal trackage rights remedy under old 49 U.S.C. 11103(a) or new 49 U.S.C. 11102(a) is available. See Decision No. 44, slip op. at 170 & n.217. BNSF contends, in essence, that because any decision we might issue on a terminal trackage rights application cannot be issued at the same time as Decision No. 44, an override must be deemed necessary even if BNSF never invokes the terminal trackage rights remedy provided by new 49 U.S.C. 11102(a). We are not persuaded that the necessity alleged by BNSF is sufficient for anything more than a "bridge the gap" application of the immunity provision. Decision No. 63, note 31.⁹⁹

The Board's analysis in Decision No. 63 and CSX/NS was correct. Absent a grant of terminal trackage rights application under Section 11102, the Board cannot exercise its override authority to impose terminal trackage rights because the sole legal authority to impose terminal trackage rights, especially over a non-applicant carrier like KCS, is found in Section 11102. Having failed to justify a grant of terminal trackage rights in its Application, BNSF should not get another bite at the apple.

In this case, a terminal trackage rights remedy is available; that is, the factual situation at hand involves terminal track, and BNSF has attempted to invoke the statutory remedy. But a

⁹⁹ See Decision No. 63 at *18. In effect, the Board was saying that it can, in the context of granting a terminal trackage rights application for “bridge the gap” terminal trackage rights, use its override powers to implement those trackage rights and override any contract language that may prevent application of the “bridge the gap” terminal trackage rights. But as noted previously, BNSF’s Application is not a “bridge the gap” application for which the Board can invoke the override provision so as to implement terminal trackage rights.

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party that files a terminal trackage rights application must still meet the requirements of that statutory remedy. If it fails, as BNSF has, to establish public need, operational feasibility and no substantial interference, the access is denied. The proponent does not get another bite at the apple by seeking to invoke Section 11321(a) override authority as an independent statutory basis to compel trackage rights over a non-applicant carrier.

To grant an override in this situation would be to say that even though BNSF terminal trackage rights are not in the public interest, are not practicable, and would substantially interfere with service to shippers on the Rosebluff Lead, nevertheless it is “necessary” to allow such operations in order to effectuate the merger of UP and SP. Such a conclusion would make no sense. Rather, the mere availability of Section 11102 as a potential remedy, whether successful or not, means that an override is not “necessary.” See Decision No. 44 at 168-169; cf. Decision No. 66 (STB served Dec. 31, 1996)(where the Board did grant an override of a joint facility agreement - invoking the applicant carrier in order to implement a merger condition that granted extensive trackage rights between Provo, UT and Utah Railway Junction, UT because the terminal trackage rights statute was not applicable to the factual situation and was thus unavailable).

Likewise, as noted previously, overriding the joint facility agreement and granting BNSF terminal trackage rights is not necessary to implement the Lake Charles Condition. BNSF already has access and is already an effective competitor for Lake Charles Area traffic. BNSF simply cannot, and has not, established the “necessity” for overriding private joint facility agreements that, in some cases, go back over eighty years. Doing so would be to take KCS’ property rights and give them to BNSF – something the Board should not and cannot do.

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Even if the Board had authority to override the joint facility agreements applicable to the Rosebluff Lead, the Board does not know what it should override. Because BNSF refused to arbitrate and fought KCS's declaratory judgment action about the joint facility agreements, there is no authoritative interpretation of what provisions of the joint facility agreements prevent BNSF access on the Rosebluff Lead.¹⁰⁰ Instead, BNSF says that the Board should "express[ly] override [] the terms of the joint facility agreements that KCS has invoked as a basis for blocking BNSF's direct access," without even saying what it thinks those terms are. Likewise, what of the operational agreements that KCS, SP and UP have carefully crafted to implement the joint facility agreements? What is the Board to override there? The Board should reject BNSF's request to shoot blindly at the longstanding, carefully crafted agreements covering the constrained, high volume joint facility that is the Rosebluff Lead, lest it leave the parties to years of further disputes about what has or has not been overridden.

For all the above reasons, the Board cannot use Section 11321(a) to override the many agreements covering the Rosebluff joint facility in order to impose trackage rights on KCS.

¹⁰⁰ Also, it is the Board's policy to defer to courts to interpret contracts. See generally V&S Railway, LLC – Petition for Declaratory Order – Railroad Operations in Hutchinson, Kan., STB Docket No. FD 35459, slip op. at 5 (STB served Jul. 12, 2012) ("the Board will not address [issues pertaining to the terms of an operating agreement], because such state law contract interpretation generally should be conducted by the [appropriate] court and not the Board"); BNSF Railway Company – Discontinuance of Trackage Rights Exemption – In Peoria and Tazewell Counties, Ill., STB Docket No. AB-6 (Sub-No. 470X), et al., slip op. at 12 (STB served Apr. 26, 2011) ("[t]he Board's policy is where possible to refrain from interpreting or enforcing private contracts or settlement agreements, leaving such issues to be resolved by the parties to the contract or in court") (citing Canadian Pac. Ry. – Control – Dakota, Minn. & E. R.R., STB Docket No. FD 35081, slip op. at 7 (STB served May 7, 2009); and Union Pacific Railroad Company – Discontinuance Exemption – In Oklahoma City, OK, STB Docket No. AB-33 (Sub-No. 239X), slip op. at 3 (STB served Apr. 13, 2006) ("[i]t is well established that we do not undertake to interpret or enforce private contracts, including operating agreements") (citing The Kansas City Southern Railway Company – Adverse Discontinuance Application – A Line of Arkansas and Missouri Railroad Company, STB Docket No. AB-103 (Sub-No. 14), slip op. at 7 (STB served Mar. 26, 1999), and case cited therein).

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BNSF sole remedy is to file a terminal trackage rights application and attempt to meet the standards of the statute. If it fails, which it has done, it does not get to invoke the Board's override authority to get another bite at the apple. Indeed, if the Board were to impose terminal trackage rights on KCS via its override authority, such an action would be contrary to long standing precedent and constitute a taking of KCS's property without adequate compensation in violation of the 5th Amendment to the U.S. Constitution.

CONCLUSION

Consistent with 49 U.S.C. §11102(a), BNSF, as the party with the burden of proof, must establish that its Application (1) involves terminal facilities; (2) its use of those facilities would be practicable; (3) that a grant of the Application is in the public interest; and (4) that its use of the Rosebluff Lead would not substantially impair UP's and KCS's ability to handle their own business there. BNSF would also have to compensate KCS if BNSF's Application was granted. BNSF's Application fails multiple ways to meet these tests.

BNSF's Application fails to meet the public interest standard of 49 U.S.C. 11102(a). Under Board precedent, there are only three "public interest" standards that justify a grant of terminal trackage rights: Midtec; a significant service failure so as to justify prescription of alternative service under 49 CFR §1146; or "bridge the gap" rights filed within the context of merger. Since the adoption of Midtec, there are no other legally articulated standards than these three standards. The Board has developed these strict standards because terminal trackage rights are highly disruptive, and are therefore intended to be the "remedy of last resort." BNSF fails on all three.

Although CITGO and BNSF half-heartedly claim that UP's claimed service inadequacies justify BNSF direct access, neither party actually attempts to prove that there are service

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deficiencies justifying a grant under 49 CFR §1146. Indeed, the evidence shows that whatever service inadequacies there were, such service problems were largely CITGO's own fault or the fault of BNSF for not investing in adequate infrastructure. BNSF presents no evidence under the Midtec standard, which is the only applicable public interest standard. BNSF's failure to present evidence to meet that test, in and of itself, requires denial of the Application. BNSF also has not established that its request fits within the narrow "bridge the gap" exception to Midtec, which has been applied in very narrow circumstances that do not exist here.

Even if one applies BNSF's broad and legally unprecedented general public interest standard, i.e. the Application is necessary to implement the Lake Charles Condition for BNSF to fulfill the competitive role that the Board envisioned it to fulfill, the Application must still be denied. BNSF has presented no evidence showing that it can't compete now, is not an effective competitor, and/or that the grant of terminal trackage rights is necessary to allow it to become an effective competitor. Instead, the record reflects the opposite: BNSF has, through haulage and switching, been a very effective competitor, and as Drs. Reynolds and Neels discuss, this has more than fulfilled the goal of the Board's Lake Charles Condition.

BNSF has also failed to show that its proposed operations are practicable and would not interfere with UP's and KCS's operations. As detailed in the verified statements of Mr. Steve Sullivan and John Ireland, Rick Bartoskewitz, and Jimmy Wayne Scott, BNSF's operations over the Rosebluff Industrial Lead and Rosebluff Yard to deliver unit trains of crude oil to CITGO would not be practicable, especially given the extensive and complex operations that already occur between UP and KCS. The addition of BNSF operations over those facilities would also create substantial interference with KCS's service to its other shippers and would impair KCS's ability to serve those shippers. Furthermore, even if practicable, the lack of capacity within the

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CITGO facility itself to handle unit trains of crude oil, i.e. to store, load, unload, switch, and build unit trains, would itself cause interference with UP's and KCS's ability to use their own facilities.

In short, the Application should be denied. This proceeding is not about BNSF fulfilling the competitive role envisioned by the Board in UP/SP Decision Nos. 44 and 63. BNSF has in fact been fulfilling that role by serving the Lake Charles Area shippers for nearly nineteen years. Rather, this proceeding is really about BNSF trying to use government regulation to obtain forced access over the private property of UP and KCS and to do so in direct contradiction of private contracts governing that property, without complying with the requirements of Section 11102(a), and without compensating KCS. The Board should not condone such a policy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply of The Kansas City Southern Railway Company to BNSF Railway Company's Opening Statement and Evidence filed on December 31, 2014 was served by first-class mail, postage prepaid, or by a more expeditious manner, this 24 day of August, 2015, on counsel for BNSF Railway Company, Union Pacific Railroad Company, and any other party of record.



William A. Mullins
Attorney for The Kansas City Southern
Railway Company

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

REPLY OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

EXHIBIT A

**VERIFIED STATEMENT OF DR. ROBERT REYNOLDS
AND DR. KEVIN NEELS**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**VERIFIED STATEMENT OF
DR. KEVIN NEELS
DR. ROBERT REYNOLDS**

Kevin Neels

Robert Reynolds

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Dated: August 19, 2015

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I. Summary of Our Qualifications

This testimony is sponsored by Kevin Neels and Robert J. Reynolds. We are both Principals of *The Brattle Group*, an economic consulting group with offices in the United States in Cambridge, MA, Washington, DC, and New York City, NY as well as outside the U.S. Our business address is 1850 M Street, NW, Suite 1200, Washington, DC.

Kevin Neels, is an expert in regulatory economics and in particular, STB regulation of rail markets. He holds a Ph.D. from Cornell University. At the Brattle Group he directs the transportation consulting practice. He has more than 30 years of experience providing economic analysis, research, and consulting to a wide range of clients. These clients have included federal, state and local transportation agencies, as well as firms in the postal, trucking, railroad, airline, and auto and aircraft manufacturing industries. His work has frequently addressed issues relating to competition, regulatory policy and the proper relationship between the public and private sectors. He has previously submitted testimony before a number of different regulatory bodies, including the Surface Transportation Board (STB). He has also testified in international arbitrations, and in state and federal courts. Prior to joining The Brattle Group he served on the staff of a number of other institutions, including the Rand Corporation and the Urban Institute. He also served as a Director of the consulting firm of Putnam, Hayes & Bartlett and Vice President of Charles River Associates, where he directed that firm's transportation practice. He is a member of the American Economic Association and former Chairman of the Committee on Freight Transportation Economics and Regulation of the Transportation Research Board, an arm of the National Academy of Sciences. A copy of his resume is included as Appendix A.

Robert J. Reynolds is an expert in industrial organization, competition policy, antitrust, and regulatory issues. He has more than 30 years experience in academia, government, and consulting in dealing with such issues. He served in the economic office of the Antitrust Division, U.S. Department of Justice and have subsequently consulted and prepared reports for federal and state antitrust agencies. He has also held academic positions at Cornell University, the University of California at Berkeley, and the University of Idaho where the courses taught included ones in antitrust, industrial organization, and regulation. Immediately prior to joining Brattle in 2004, he was Chairman of Competition Economics, Inc., a firm specializing in consulting in antitrust and regulatory consulting, primarily for private clients. His private consulting work has been in large part in such industries as aerospace, telecommunications, electric utilities, and airlines and other transportation means, including railroads and has included testimony before FERC and the ICC. He holds a Ph. D. in economics from Northwestern University. His background is more fully detailed in Appendix B.

II. Introduction

A. PURPOSE OF THIS REPORT

We have been asked to examine the state of competition among the railroads serving shippers and consignees located in Lake Charles, Louisiana, focusing on the competitive role played by Burlington Northern Santa Fe ("BNSF").¹ We have been asked to evaluate whether BNSF has been successful in establishing itself as an effective competitor in markets involving Lake Charles, and replacing the competition in this area that was lost as a result of the UP/SP merger.

B. BACKGROUND

The questions that have been posed to us arise because of a petition by BNSF to the Surface Transportation Board ("STB") to require the Union Pacific Railroad ("UP") and the Kansas City Southern Railroad ("KCS") to grant to BNSF trackage rights over their jointly owned track that would permit BNSF to offer direct service to shippers located in the Lake Charles area. BNSF currently serves its Lake Charles customers indirectly via a haulage agreement with UP. BNSF has argued that its inability to provide direct service to Lake Charles customers has hampered its ability to compete effectively and to serve as a competitive constraint on UP.

The current haulage agreement between BNSF and UP dates back to 1996, and arose as part of the proceedings whereby the Southern Pacific Railroad ("SP") was acquired by the predecessor to the current UP. The Lake Charles area was one of a number of locations at which the SP and the predecessor to the UP had competed, and where the proposed merger might have resulted in some loss of competition. In order to assuage concerns over this loss of competition UP and BSNF negotiated an agreement that provided BNSF with a broad set of traffic rights allowing it to operate over major portions of the network that was to be created by the merger.

In the final stages of this agreement's negotiations the trackage rights provided by it were expanded to allow BNSF to serve customers in the Lake Charles area. The existence of this agreement played a role in the decision of the STB to permit the SP/UP merger to go forward.²

The Lake Charles provisions of the agreement between BNSF and UP became controversial as a result of the failure of either party to consult with or receive the approval of

¹ In the remainder of this statement we will use the term "Shipper" to refer collectively to shippers and to consignees.

² Surface Transportation Board, Finance Docket No. 32760, Decision No. 63, December 3, 1996, page 2.

KCS, which was a part owner of the Lake Charles area tracks to which BNSF was being given access. Nonetheless, the STB's approval of the merger was conditioned, among other things, on the implementation of this agreement, and BNSF has served customers in the Lake Charles region ever since.

In its petition BNSF has asserted that it needs the requested direct trackage rights in order to be able to serve directly a CITGO owned refinery located in the Lake Charles area.³ While this particular service is not the sole reason for BNSF's petition, its prominence in BNSF's petition makes an evaluation of BNSF's ability to compete for this business especially relevant.

C. APPROACH

Our analysis relies primarily on two data sources. The first is the confidential waybill sample maintained by the STB. The waybill sample is a stratified random sample of carload waybills for all U.S. rail traffic submitted by those rail carriers terminating 4,500 or more revenue carloads annually. For purposes of this analysis the STB provided us with access to all of the waybill records corresponding to shipments either originating or terminating in the Lake Charles BEA Economic Area⁴ over the period from 1996 through 2013. This sample contains unmasked revenues, permitting us to calculate the rates paid over this period. The second data source consists of data provided by UP, BNSF and KCS on traffic shipments into or out of the Lake Charles BEA Economic Area in 2012 and 2013. Unlike the waybill sample, the data provided by the railroads represents a census of all traffic into or out of the area. The data provided by the railroads contains information on the tonnage shipped, but does not contain information on revenues or prices.

III. Characterizing BNSF's Competitive Role

In analyzing BNSF's effectiveness as a competitor we focus on two indicators. The first is the share of the market that BNSF has been able to achieve.

The second measure of competitive effectiveness that we consider is price. Its relevance is obvious.

³ Application For Terminal Trackage Rights, Finance Docket No. 32760 (Sub-No. 46), filed February 27, 2013, pages 2-3.

⁴ BEA Economic Areas are aggregations of counties or county equivalents that divide the United States into approximately 180 mutually exclusive and collectively exhaustive regions. For a definition of these regions see <http://www.bea.gov/scb/pdf/2004/11November/1104Econ-Areas.pdf>

A. FINDINGS

1. BNSF Has Been Able to Achieve a Substantial Presence in the Lake Charles Area

In calculating market shares we focus on the identity of the carrier handling the Lake Charles end of the movement or movements in question. Market shares are calculated based on the tonnage of movements in question

Table 1, which is based upon the traffic data produced by KCS, BNSF and UP, shows the shares of rail traffic into the Lake Charles area handled by each of the railroads in 2012 and 2013. In both years BNSF handled [REDACTED] of the inbound tonnage, with UP handling approximately [REDACTED] and KCS handling the remainder. Clearly, BNSF has been able to win a [REDACTED] of inbound Lake Charles traffic.

[REDACTED]

	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Notes:
Excludes traffic that both originates and terminates in the Westlake, Lake Charles or West Lake Charles stations, and all coal traffic.
Includes all other traffic terminating at the Westlake, Lake Charles or West Lake Charles station.
[1]: KCS Traffic Tapes.
[2]: UP Traffic Tapes.
[3]: BNSF Traffic Tapes
[4]: [1] + [2] + [3].
[5]: [1] / [4].
[6]: [2] / [4].
[7]: [3] / [4].

Table 2 which is also based upon the traffic data produced by KCS, BNSF and UP, shows the shares of rail traffic out of the Lake Charles area handled by each of the railroads in 2012 and 2013. BNSF handles [REDACTED] in both years – of this traffic. KCS and UP each handled [REDACTED]

[REDACTED]

[REDACTED]

Notes:

Excludes traffic that both originates and terminates in the Westlake, Lake Charles or West Lake Charles stations, and all coal traffic.

Includes all other traffic originating at the Westlake, Lake Charles or West Lake Charles station.

[1]: KCS Traffic Tapes.

[2]: UP Traffic Tapes.

[3]: BNSF Traffic Tapes

[4]: [1] + [2] + [3].

[5]: [1] / [4].

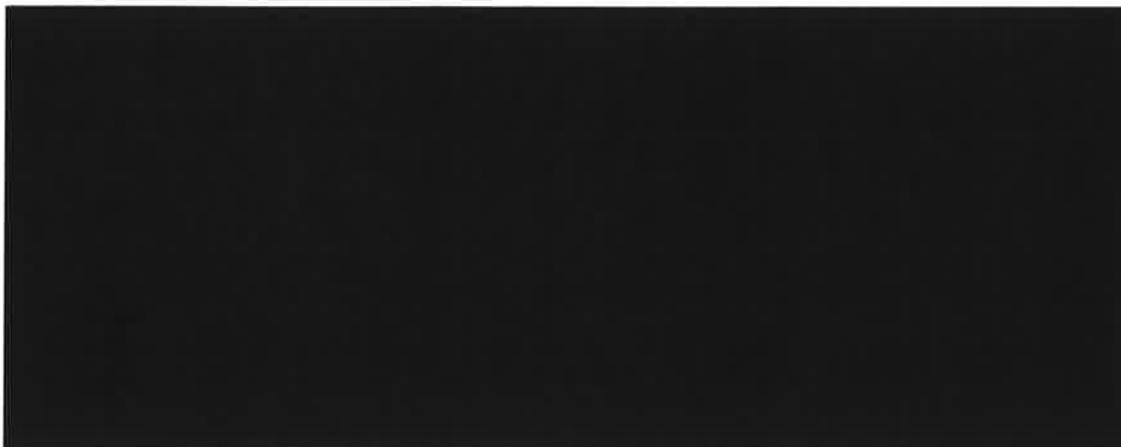
[6]: [2] / [4].

[7]: [3] / [4].

In evaluating the significance of the information presented in Tables 1 and 2 there are a number of possible perspectives for evaluating these shares. First, since BNSF did not serve the Lake Charles area prior to implementation of the CMA, its market presence under this agreement has grown from a zero share to account [REDACTED] of inbound traffic, and a not [REDACTED] share of outbound traffic. From this perspective it appears that BNSF has flourished under the terms of the CMA.

An alternative perspective from which to evaluate BNSF's performance on routes into and out of the Lake Charles area begins with the observation that goal of the CMA was to allow BNSF to fill the competitive void created by the merger of the SP and UP. That goal implies that

the most relevant question is whether and to what extent BNSF has been able to fill the "empty shoes" left behind by SP when it disappeared as a result of the merger. Answering this question involves a comparison of current competitive conditions in the Lake Charles area with those that existed before the merger. For this purpose we measure the state of competition using the Herschmann-Herfindahl Index ("HHI"). Table 3 shows this comparison, drawing upon information presented in a Verified Statement filed with the Board in 1996 by Professor Curtis Grimm of the University of Maryland.⁵



Notes:

[A],[C]: Verified Statement of Dr. Curtis Grimm In Support Of
Petition for Reconsideration, August 31, 1996, pg. 5.

[B]: Table 1.

[D]: Table 2.

In absolute terms the HHI values shown in Table 3 are [REDACTED], as they must be given the small number of firms present in this market.⁶ In absolute terms the degree of market concentration increased somewhat for inbound traffic, largely as a result of the [REDACTED]. To the extent that inbound concentration has increased relative to the pre-merger period this increase has certainly not been due to an inability by BNSF to compete effectively. The degree of concentration of outbound traffic has declined slightly. Overall, however, this comparison suggests that there has not been a significant change in competitive conditions relative to the pre-merger period.

⁵ Verified Statement of Dr. Curtis Grimm in Support of Petition for Reconsideration, August, 31, 1996.

⁶ When there are only three firms the lowest possible HHI value is 3333.

Table 4, shown below, breaks the 2012-13 inbound traffic to the Lake Charles area down by commodity. In analyzing competition in the transportation of specific commodity groups we generally define a "commodity" to include all of the items covered by a two digit STCC code. The sole exception to this convention occurs when movements of crude oil are distinguished from other commodities within the same two digit STCC code grouping.

The figures shown in Table 4 are based upon the traffic data provided by UP, BNSF and KCS. A situation in which one carrier handles a dominant share of the traffic in a specific commodity suggests the possibility, at least, that that carrier may be able sustain high transportation rates without risking a loss of business. The volumes handled decline rapidly as one goes down the list of commodities. BNSF currently handles the largest shares of the three highest volume inbound commodity groups. It currently handles [REDACTED] traffic, the largest inbound movement by far. KCS currently handles [REDACTED], the fourth largest inbound commodity grouping. Whatever concerns this high concentration of traffic on a single carrier might raise, they have nothing to do with the loss of competition that was caused by the UP/SP merger, and that motivated the Board to open the Lake Charles area up to BNSF service. It is not until one gets down to the fifth largest commodity grouping – [REDACTED] – that one find a high concentration of traffic on [REDACTED]

Table 4: Inbound Tonnage to Lake Charles Area, by Commodity, based on Traffic Tapes, 2012-13



Sources and Notes:

Excludes traffic that both originates and terminates in the Westlake, Lake Charles or West Lake Charles stations, as well as all coal traffic.

Includes all other traffic terminating at the Westlake, Lake Charles or West Lake Charles station.

[1]-[3]: 2012-2013 UP, KCS and BNSF Traffic Tapes.

[4]: [1] + [2] + [3].

[5]: [1] / [4].

[6]: [2] / [4].

[7]: [3] / [4].

Far from suggesting that BNSF has struggled to establish itself as a competitor on Lake Charles routes, the results shown in Table 4 indicate that in some commodities – [REDACTED]

Table 5 focuses on transportation of crude oil, [REDACTED], and one that figures prominently in this proceeding. Over the 2012-13 period [REDACTED] was transported by rail into the Lake Charles area. [REDACTED] was handled by BNSF. The largest single movement included in this total

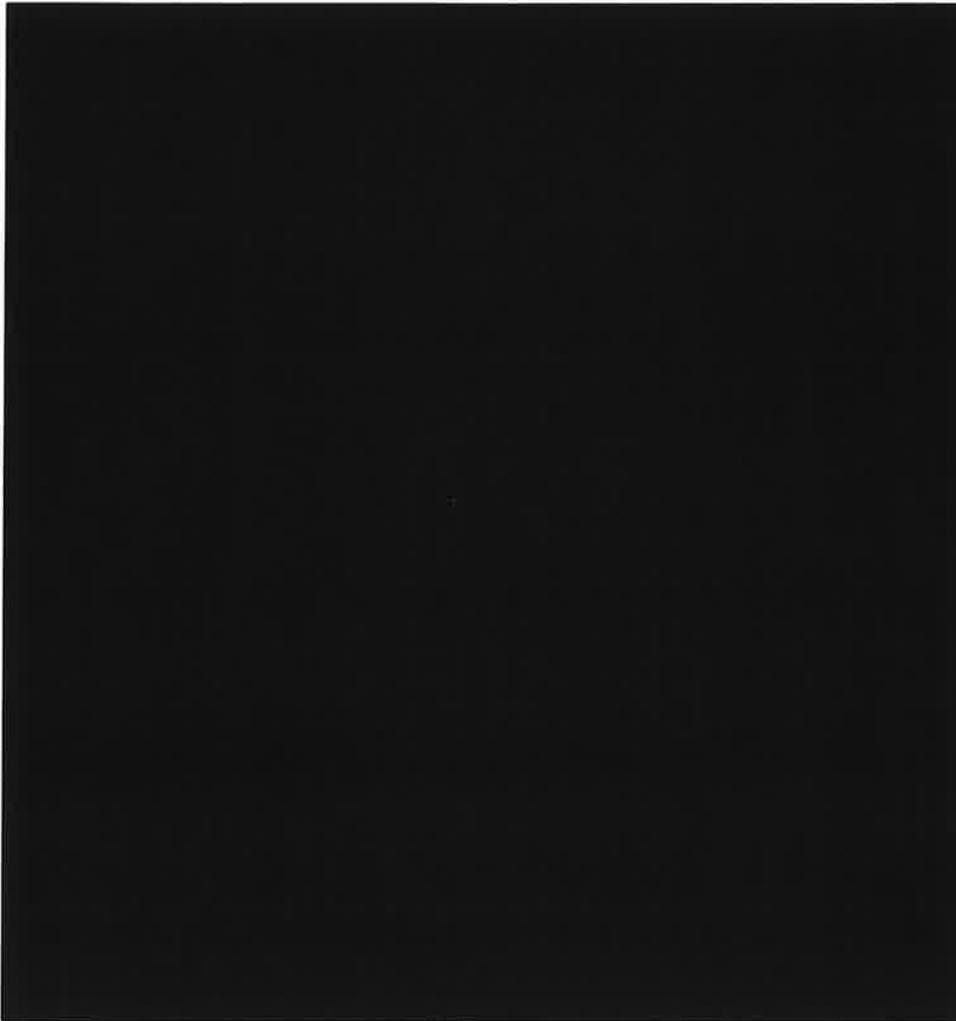
was a movement [REDACTED].⁷ This route appears to be the movement highlighted by BNSF in its application for terminal trackage rights, in which it stated that “BNSF has agreed to move traffic from certain crude oil shippers in Oklahoma to a CITGO refinery facility located At West Lake Charles,” and that it needed trackage rights “to directly serve CITGO and other customers in the West Lake Charles area.”⁸ The traffic data produced by the three carriers indicates that over the 2012-13 period BNSF handled [REDACTED] of this traffic. It does not appear from the traffic data that BNSF’s lack of terminal trackage rights has hampered its ability to meet its CITGO commitments or to “fulfill important aspects of the competition-preserving role that the Board established for BNSF under the merger conditions relating to Lake Charles area shippers.”⁹

⁷ BEA Economic Areas are aggregations of counties or county equivalents that divide the United States into approximately 180 mutually exclusive and collectively exhaustive regions. For a definition of these regions see <http://www.bea.gov/scb/pdf/2004/11November/1104Econ-Areas.pdf>

⁸ Application for Terminal Trackage Rights, February 27, 2013, pages 2-3.

⁹ Application for Terminal Trackage Rights, February 27, 2013, page 3.

Table 5: Inbound Crude Movements to Lake Charles Area, by Commodity, based on Traffic Tapes, 2012-2013



Sources and Notes:

[1]-[3]: UP and BNSF Traffic Tapes.

Excludes traffic that both originates and terminates in the Westlake, Lake Charles or West Lake Charles stations.

Includes all other crude oil traffic terminating at the Westlake, Lake Charles or West Lake Charles station.

2. BNSF Has Increased Its Market Share Over Time

The traffic data produced by the three railroads cover a recent two year period. While these data indicate that BNSF has been able to establish itself as a significant competitor on routes into and out of the Lake Charles area, it is also useful to examine changes in BNSF's share since the UP/SP merger and the implementation of the CMA.

This question can be addressed using the confidential waybill sample, which covers the entire post-merger period from 1997 through 2013. Table 6 shows shares by year calculated on a tonnage basis for inbound traffic to the Lake Charles area. Although shares fluctuate on a year to year basis, over the entire period the share of inbound traffic handles by BNSF [REDACTED]. In the years immediately following the UP/SP merger BNSF handled only [REDACTED] percent of inbound tonnage, but its share in the 1999-2007 period averaged slightly [REDACTED] percent, and over 2008 to 2013 its share has averaged [REDACTED].

[REDACTED]

[REDACTED]

Based on 1997-2013 Waybill Samples.
Tonnage from a movement is allocated to the movement's terminating carrier.
Coal shipments are excluded.
All traffic terminating in the Lake Charles, Westlake, or West Lake Charles stations ("The Switching Zone") and originating outside of The Switching Zone is evaluated.

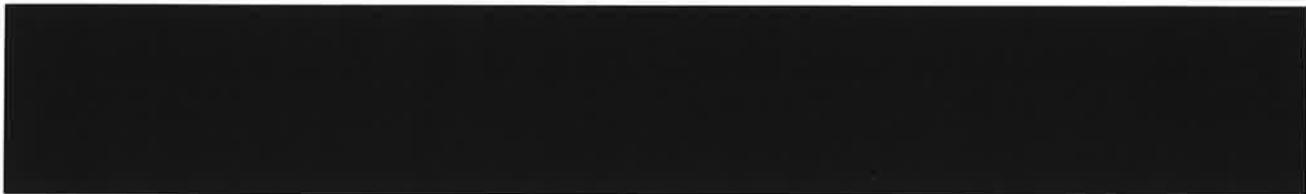
Table 7 shows the HHI index values implied by these market shares. There is a good deal of fluctuation in these values over time. To evaluate overall trends we ran a simple linear regression of the HHI values against a time trend. The slope coefficient from this regression is shown in the rightmost column of the table. This coefficient is negative, signifying that the overall trend in concentration was downward over the period

[REDACTED]

¹⁰ See BNSF-HC-001597-613, and in particular, BNSF-HC-001612.

Table 8, which is also based on data from the confidential waybill sample, shows tonnage shares by year for outbound traffic from the Lake Charles area. The pattern shown there mirrors that discussed above in connection with Table 6. In the initial post-merger years the share of outbound traffic handled by BNSF ██████████ in 1997-98. Over time this share grew fairly steadily, averaging about ██████████, and ██████████ in 2009-2013. Although BNSF's share of outbound traffic ██████████ in 2013, its share in that year was still above the average for the period as a whole.

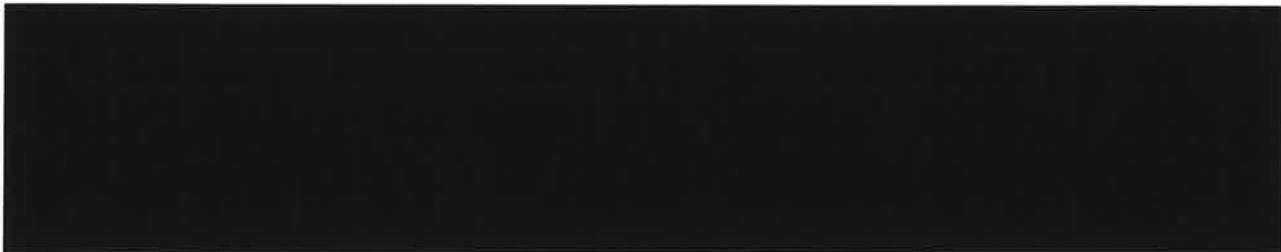
Table 8: Outbound Lake Charles Market Shares, by Tons, based on Waybill Data, 1997-2013



Based on 1997-2013 Waybill Samples.
Tonnage from a movement is allocated to the movement's originating carrier.
Coal shipments are excluded.
All traffic originating in the Lake Charles, Westlake, or West Lake Charles stations ("The Switching Zone") and terminating outside of The Switching Zone is evaluated.

Table 9 shows HHI index values for outbound Lake Charles movements. As with inbound movements, the index values are relatively high in absolute terms, and fluctuate quite a bit over the period. The slope coefficient derived by regressing these index values on a time trend is shown in the rightmost column. It is again negative, signifying that the general trend in market concentration over this period has been downward.

Table 9: Herschmann-Herfindahl Index Values for Outbound Lake Charles Movements, based on Waybill Data, 1997-2013



The long perspective provided by the waybill data indicates that the significant presence that BNSF currently enjoys on routes into and out of the Lake Charles area is not a new phenomenon. Although there has been a great deal of fluctuation in the market shares of the three carriers over the course of the post-merger period, BNSF's shares of both ██████████ ██████████, leaving that carrier with shares in recent years that are higher than its shares for the immediate post-merger period, or for the period as a whole. In addition, while HHI index values for inbound and outbound traffic have also fluctuated, their

overall trends have been downward. These facts indicate that BNSF has been an able and effective competitor using the rights that it currently enjoys in the Lake Charles area.

3. Rates Have Not Increased Since the UP/SP Merger and the Implementation of the CMA

While it is clear that BNSF has been successful in building a presence in the Lake Charles area and gaining share, behavioral evidence in terms of rates is also important in evaluating whether BNSF's rivalry has resulted in successfully maintaining competition for Lake Charles shippers that was the aim of the Board's decision to grant access to this area. BNSF's role in that area was to replace the Lake Charles competition that was lost as a result of the UP/SP merger and preserve the competitive rate structure that existed prior to that merger. The changes in rates that have occurred since that time provide a direct measure of BNSF's success in fulfilling this role.

Over the lengthy 1997-2013 period railroad rates would be expected to rise to some extent, if only to keep up with general inflation and other cost and capacity pressures on the railroad industry. For this reason our focus in evaluating the competitive role of BNSF has to be not simply on whether rates have increased or decreased, but rather, whether they are increased or decreased relative to railroad rates in general. For a measure of overall trends in railroad rates we turn to the Producer Price Index ("PPI") for rail transportation.¹¹

To investigate how rates on Lake Charles routes have changes over the course of the post-merger period we computed average revenue per ton mile and by year for the top 60 inbound and outbound routes measured by tonnage.¹² For this analysis we define a "route" as an origin BEA region/destination BEA region/commodity combination. Disaggregation by commodity permits us to account for the sometimes substantial variations in rate levels across commodities, and to limit the extent to which our analysis of rates might be distorted by changes in the mix of traffic. We compute a set of adjusted revenue per ton mile statistics for these routes by dividing the raw rates by the railroad transportation PPI.

Results of these calculations are shown in Tables C1 and C2 in Appendix C. To illustrate more clearly overall trends the rightmost column contains for each route the slope coefficient from a simple linear regression of the rate for that route on time. Each slope coefficient can,

¹¹ The PPI for rail transportation is available from the Bureau of Labor Statistics at: <http://data.bls.gov/timeseries/pcu482---482--->, last accessed August 20, 2015.

¹² The [REDACTED]

therefore, be interpreted as the average per year change in cents in adjusted revenue per ton mile over this period on each route. At the bottom of the table is a summary of how rates have changed on these routes.

Over the period from 1997 through 2013 rates on outbound routes [REDACTED]. By this measure, it does not appear that there has been any systematic upward trend in rates over the post-merger period. Relative to industrywide price trends, rates on Lake Charles outbound routes have decreased slightly more often than they have increased.

Over the period from 1997 through 2013 rates on inbound routes [REDACTED]. One three routes there was traffic only in a single year, and so it was impossible to establish a trend. Relative to industrywide price trends, rates on Lake Charles inbound routes have increased slightly more often than they have decreased, but it does not appear that there has been any broad and systematic upward trend in rates over the post-merger period.

To test whether our conclusions regarding rates are sensitive to geographic definitions we reran the analyses described above on routes defined as county pairs rather than BEA region pairs. The results of this alternative analysis are shown in Tables C3 and C4 in Appendix C. They resemble the results presented in Tables C1 and C2 where the routes with increase and decrease rates are roughly split. Relative to railroad rates in general, rates [REDACTED]. On inbound county-based routes adjusted [REDACTED]. Hence, there is no indication in this alternative analysis of a broad and systematic upward trend in rates over the post-merger period.

Because crude oil only began in the last few years to move in significant quantities by rail, relatively few of the routes shown in Tables C1 through C4 involve the transportation of this commodity. For the same reason it is impossible with any confidence to measure trends in transportation rates for this commodity. However, given the evidence cited above there is no reason to expect competition among the carriers serving the Lake Charles area to be any less effective in containing these rates than it has been in containing the rates shown in Tables C1 through C4, or rates in general.

IV. Conclusion

There is nothing in the evidence we have examined to suggest any inability or failure on the part of BNSF to fulfill successfully the competitive role envisioned by the STB.

Since the approval of the SP/UP merger BNSF has used the Lake Charles trackage rights granted to it under the CMA to establish itself as a significant competitor on routes into and out

of the Lake Charles area. BNSF now handles [REDACTED] of overall Lake Charles rail traffic and of traffic on many important routes. In particular, BNSF handles [REDACTED] crude oil moving into the Lake Charles area by rail. Over time BNSF's shares of both inbound and outbound traffic have tended to increase. And overall market concentration has tended to decrease.

Examining the rates paid by Lake Charles shippers, we find no evidence that these rates have increased substantially relative to railroad rates in general. Rates on some routes have moved up relative to general rate, and rates on other have trended down. Overall, we find that relative to the general level of railroad rates, the rates paid by Lake Charles shippers are declining more often than they are increasing.

In short, we find no sign of any competitive failure requiring intervention by the STB to expand the trackage rights that BNSF has been using successfully to serve the Lake Charles area in the nineteen years since the SP/UP merger was approved.

Appendix A – Dr. Neels Curriculum Vitae

Dr. Kevin Neels directs the Transportation Practice at *The Brattle Group*. Dr. Neels has more than 30 years experience as a consultant and expert witness in the rail, trucking, courier, postal, aviation, and automotive industries. He has led many significant engagements relating to competition, market structure, pricing, revenue management, distribution strategy, regulation, and public policy. His work has addressed issues related to system planning, competition policy, privatization, and congestion management.

Prior to joining *The Brattle Group*, Dr. Neels served as Vice President and leader of the transportation practice at Charles River Associates. He has also served as a researcher in the Urban Policy Program at the Rand Corporation and the Transportation Studies Program at the Urban Institute, as a Director in the Transportation Practice at the consulting firm of Putnam, Hayes & Bartlett, as a Management Consultant in the Transportation Practice of the firm now known as KPMG. Dr. Neels was formerly Chairman of the Committee on Freight Transportation Economics and Regulation of the Transportation Research Board, an arm of the National Academy of Sciences. He is also a member of the Transportation Research Board's Committee on Airline Economics and Forecasting.

Dr. Neels has authored numerous research reports, monographs and articles for peer-reviewed journals. He has often been asked to offer expert testimony in legal and regulatory proceedings. He regularly serves as an invited speaker at conferences and industry forums, and his opinions and observations on industry developments are frequently quoted in the popular and trade press. Dr. Neels earned his Ph.D. from Cornell University.

A sample of the project experience of Dr. Neels is shown below.

EXPERIENCE

Freight Transportation

- ◆ Dr. Neels served as the principal competition witness for the acquiring party in a proceeding before the Surface Transportation Board regarding the merger of the two largest short line railroad holding companies in the U.S. In connection with this work he analyzed every point of contact between the rail systems owned by these two companies, and analyzed the competitive implications of placing the combined networks under common control.
- ◆ For an Ex Parte proceeding before the Surface Transportation Board Dr. Neels provided written testimony regarding procedures for settling disputes over the reasonableness of rail transportation rates. His testimony related to aspects of the Standalone Cost methodology employed by the Board in resolving these disputes, focusing in particular on the role that third party traffic plays in such analyses, and the manner in which the revenues associated with such traffic are assigned to different

portions of the routes followed by such traffic. His testimony discussed the typical structure of North American freight rail networks, and the roles that gathering, branch and main lines play in assuring the overall economic viability of the network as a whole.

- ◆ For a major U.S. based freight railroad, Dr. Neels developed a system of models to predict traffic levels and revenues by carrier for the North American freight rail market under alternative scenarios regarding market structure and regulatory policy. This modeling system incorporated detailed representations of the North American rail and highway networks, algorithms for determining shipment routing under alternative operating policies, and a series of statistical models capturing the underlying structure of freight traffic flows.
- ◆ For a non-U.S. government client, Dr. Neels led the team serving as fairness advisors in connection with the privatization of a government owned railroad. This engagement involved review of and commentary upon the bidding procedures employed in the transaction, analysis of the extent to which different bidders addressed and resolved policy concerns expressed by government officials, and advising government officials regarding the extent to which the various bids received reflected the full market value of the operation.
- ◆ On behalf of a provider of services to long-distance trucking firms, Dr. Neels offered expert testimony on the status of the trucking market, and on the extent to which a downturn in that market affected the value and economic viability of trucking firm service providers during a period in which his client concluded a series of acquisitions.
- ◆ In testimony before the U.S. Postal Rate Commission, Dr. Neels offered expert testimony analyzing the procedures used by the U.S. Postal Service to measure the transportation costs associated with its various products. His analysis addressed a wide range of issues, including the Service's use of its dedicated air network for transportation of expedited products, fieldwork procedures used to collect data on composition of the mail stream at different points in the rail network, potential biases in the assignment of transportation costs to products, and flaws in econometric analyses of transportation cost variability introduced by other witnesses in the proceeding.
- ◆ In support of a key economic witness in a hearing regarding refined petroleum product pipeline rates before the Federal Energy Regulatory Commission, Dr. Neels conducted an analysis of the relationship between product prices in the different geographic areas linked by the pipeline system. He also examined alternative transportation modes and concentration in the pipeline's origin markets.
- ◆ For a major U.S. railroad involved in a commercial dispute over trackage rights and trackage fees, Dr. Neels conducted a detailed analysis of over-the-track incremental operating costs. This analysis involved, among other things, extensive use of the Uniform Rail Costing System maintained by the Surface Transportation Board.
- ◆ For a major North American rail car manufacturer involved in a patent infringement lawsuit Dr. Neels offered expert testimony on the economic value of an innovative car design relative to existing designs, and on the damages imposed on the manufacturer as a result of infringement of its patents on this new design.
- ◆ For an express package delivery carrier intervening in a rate case before the U.S. Postal Rate Commission, Dr. Neels conducted a critical review of econometric studies of cost variability introduced into evidence by a witness testifying on behalf of the U.S. Postal Service. He identified a number of serious conceptual and methodological flaws in this analysis, and demonstrated that the

substantive conclusions of the analysis were sensitive to relatively minor change in its design. On the basis of his testimony the Commission rejected the arguments of the Postal Service in the Commission's final ruling.

Airline Industry

- ◆ For a major U.S. network air carrier Dr. Neels was a key member of a team of consultants charged with the development of an operations research strategy aimed at improving the carrier's performance and competitive standing across a broad range of areas of operation, including financial planning, scheduling, crew management, maintenance, flight operations, air cargo sales, marketing, reservations and distribution. This engagement involved extensive onsite interviews with numerous operating personnel at the carrier's headquarters. It identified a lengthy list of investment opportunities involving the application of a variety of advanced decision support tools.
- ◆ For a major international air carrier accused of monopoly leveraging and attempted monopolization of a key market, Dr. Neels prepared a report analyzing the carrier's use of corporate discounts and travel agent override commissions, and rebutting arguments that these agreements could be construed as exclusive dealing.
- ◆ For a major U.S. air carrier, Dr. Neels conducted an extensive empirical investigation of the responses of travel agents to carriers' incentive and override programs. Using the results of this investigation, he evaluated his client's sales force management and travel agent incentive strategies to identify specific ways in which redesign and or retargeting could increase their net revenue yields.
- ◆ Working on behalf of a major air carrier in an antitrust case involving allegations of predatory pricing, Dr. Neels worked directly with the lead litigator for the case to develop a strategy to guide discovery. Subsequently, he conducted a variety of econometric analyses measuring the extent to which plaintiffs were harmed by the alleged predation.
- ◆ For a consortium of major U.S. air carriers accused of engaging in collusion and price fixing, Dr. Neels directed a major economic analysis of industry pricing strategy and pricing dynamics. Drawing upon detailed data on daily fare changes, Dr. Neels prepared testimony and exhibits demonstrating the difficulty of engaging in coordinated pricing behavior.
- ◆ In an antitrust dispute in the airline industry, Dr. Neels was retained by the defendant to critique and rebut damage calculations prepared by experts for plaintiffs. Dr. Neels conducted a detailed analysis of the assumptions underlying plaintiff estimates of lost profits, documenting numerous instances in which specific assumptions were contradicted by industry experience or by business plans prepared by the plaintiff prior to litigation. He showed that correcting these errors resulted in dramatic reductions in estimates of plaintiff damages. The case was eventually dismissed without an award of damages.
- ◆ Dr. Neels assisted in the preparation of statistical exhibits and an expert affidavit for submission by a major U.S. carrier in a rulemaking proceeding regarding airline computerized reservation systems conducted by the U.S. Department of Transportation.
- ◆ To support expert testimony in an antitrust case between two major U.S. air carriers, Dr. Neels developed and estimated a set of statistical models for estimating the effects of GDS display bias on the booking patterns and revenues of the affected airlines. As part of this effort Dr. Neels conducted an extensive analysis of the histories of the carriers in questions and of the development of these computerized systems as the primary channel of distribution for airline tickets. He also

prepared damage estimates, assisted in the deposition of opposing expert witness, prepared trial exhibits and advised counsel on cross-examination strategy during the course of the trial.

Airport and Airway System

- ◆ For the International Air Transport Association, Dr. Neels conducted an analysis and critique of a proposed change in the structure of air traffic control user charges levied on foreign carriers entering the U.S. and overflying its territory. He pointed out a number of serious flaws in the empirical analysis that formed the basis for the new system of charges. Implementation of the new charges was halted by a federal judge.
- ◆ Dr. Neels played a critical role in a project for the Air Transport Association (ATA) of the United States to evaluate proposals for reforming the nation's air traffic control (ATC) system and to develop an effective financial and organizational structure for a reformed ATC. The plan, developed under extremely tight deadlines, required an assessment of ATC technological capabilities, estimation of the cost effects of ATC on the airline industry, an economic analysis of current and proposed ATC organizational forms and detailed financial assessment of proposed ATC entities. Dr. Neels presented his analysis and proposal to airline chief executive officers at a meeting of the ATA board.
- ◆ For the public authority responsible for the operation of one of the largest international gateway airports in the country, Dr. Neels conducted a comprehensive review of sources of information on air cargo movements. Based upon the results of this review, he worked with authority staff to devise a strategy for monitoring trends in shipments by ultimate origin and destination, commodity, carrier and type of service, and for factoring this information into an improved process for planning and executing air cargo facility improvements.
- ◆ For the operator of a major U.S. hub airport, Dr. Neels developed a series of forecasting models for use in evaluating likely passenger responses to the introduction of new types of ground access services.
- ◆ For the government of a Mexican province, Dr. Neels developed a framework for use in evaluating proposals for new airport development.
- ◆ For a conference sponsored by the National Academy of Sciences, Dr. Neels analyzed the policy issues raised by proposals for using pricing to manage demand and reduce delays at major airports. His analysis used standard antitrust tools to assess the extent of concentration in the market for airport services, and evaluated the potential for anticompetitive behavior in that market.
- ◆ To support the development of an airport system plan for a major metropolitan area, Dr. Neels prepared long-range activity forecasts for air carriers, regional airlines and general aviation.
- ◆ For an international gateway airport, he evaluated the impacts and effectiveness of a wide range of strategies for reducing delays. The policies considered included regulatory constraints on aircraft size, diversion of service to adjacent airports, a variety of pricing and slot allocation mechanisms, and expansion of facility capacity.

Aerospace Manufacturing

- ◆ For a foreign manufacturer of high end business jet aircraft Dr. Neels offered testimony on the structure of the market within which these aircraft are sold and the relationship between this market and the market aftermarket retrofits and modifications. His testimony examined the turnover of the existing fleet of high end business jet aircraft, trends over time in resale values, the relationship

between new aircraft sales and trade-ins of previously owned aircraft, and the factors influencing the commercial success of aftermarket modifications under FAA supplemental types certificates.

- ◆ For a consortium of aerospace manufacturers, Dr. Neels examined and evaluated the economic, financial and policy arguments for including manufacturers as members of government sponsored insurance against war and terrorism risks. His analysis examined the nature of the risks in question, the state of the commercial market for insurance against them, the realities of multi-party tort litigation in settings where the parties enjoy dramatically different levels of insurance coverage, and the likely long-term economic impacts if aerospace manufacturers were because of the shut down of the commercial insurance market, forced involuntarily to self-insure against these risks.
- ◆ For a major manufacturer of business jet aircraft accused of monopoly leveraging and attempted monopolization Dr. Neels conducted an analysis of the structure of the business jet aircraft market, evaluating the extent to which availability of comparable models from other manufacturers constrained the ability of the defendant in the dispute to exercise market power.
- ◆ For a U.S. based manufacturer of business aircraft, Dr. Neels quantified the damages resulting from significant defects in a major subcontractor-supplied aircraft component. These defects had resulted in a number of plane crashes and the eventual grounding of a significant portion of the manufacturer's fleet. Dr. Neels developed a sophisticated econometric model that controlled for the effects of a number of market-related background factors, and isolated the effects of the component defects on sales, revenues and profits.
- ◆ For a manufacturer of high end business jet aircraft involved in a dispute over the closure of a manufacturing plant, Dr. Neels offered expert testimony on the status of the business jet aircraft market at the time of the closure and its effects on new orders, backlog and revenue for the manufacturer. His analysis focused in particular on the effects on the business jet aircraft market of the economic downturn that began in 2001 and the events on September 11, 2001. In response to testimony offered by opposing experts, he also analyzed the decision making process that led to closure of the plant, the options open to management, and the economic justifications for closing the plant.

Automotive Industry

- ◆ For a group of automobile dealers, he conducted an econometric analysis to quantify the extent to which these dealers had suffered economic injury as a result of a scheme in which executives of the auto manufacturer accepted bribes from a subset of dealers in exchange for providing them with extra allotments of highly profitable car models. The settlement of this litigation awarded a payment of several hundred million dollars to the non-bribe paying dealers.
- ◆ For a major auto manufacturer contemplating litigation over an alleged theft of trade secrets, he developed a system of economic forecasting models to calculate the effects of the theft of sales of the company's products in a number of major international markets. Results of this confidential investigation played a key role in the company's subsequent decision to seek redress through the courts.
- ◆ For a group of automobile dealers engaged in a dispute with a distributor, Dr. Neels offered expert testimony analyzing the new auto allocation procedures used by the distributor, the distributor's policies regarding accessorization of new vehicles, and their economic effects of individual dealers. This work involved extensive econometric modeling of the dynamics of dealer inventories and the determinants of time to sale for individual vehicles.

- ◆ For a consortium of U.S., European and Japanese auto manufacturers and related firms, Dr. Neels played a key role in a major investigation of long-term trends in mobility. This study was worldwide in scope, addressing urban, rural and intercity passenger and freight transportation in both the developed and the developing world. Its particular focus was on the sustainability of the current transportation system, and the extent to which exhaustion of fossil fuels, environmental constraints, infrastructure shortages or institutional barriers were likely to constrain mobility over the next several decades.

Other Project Experience

- ◆ For an operator of vehicle and passenger ferry services to offshore islands, Dr. Neels conducted a detailed analysis of fares, costs, market structure, the extent to which particular services are subsidized, the structure of the market for ferry services, and the likely effects of changes in conditions of entry.
- ◆ For a major U.S. manufacturer that had been the target of industrial espionage and the organized theft of technology and other trade secrets, Dr. Neels offered testimony involving the stolen technology and, using a reasonable royalties approach, the damages suffered by the U.S. manufacturer as a result of the theft. At the conclusion of a jury trial in the United States, the manufacturer received a substantial damage award.
- ◆ For the U.S. Department of Energy, Dr. Neels conducted an extensive investigation of the technological, institutional and economic factors influencing the demand for residential heating fuels.
- ◆ For a Gas Research Institute study of natural gas usage in the steel industry, Dr. Neels provided consultation on statistical issues and worked closely with a team of analysts examining the economics of fuel substitution.
- ◆ Dr. Neels directed the team of economists responsible for conduct of the damages study for plaintiff in a major patent infringement lawsuit in the consumer products industry. His work included development of econometric models to forecast product sales in eight major world markets, analysis of the effects of incremental changes in sales volumes on company profits, review of historical pricing strategies and calculation of economic damages for a wide range of “but-for” pricing and product introduction strategies. He and his team also played a key role in the analysis of the case put forth by the opposing side and in the development of cross-examination strategies for opposing expert witnesses. He was designated as an expert witness in this matter, but was not called upon to testify.
- ◆ As leader of a project funded jointly by the Ford Foundation, the U.S. Department of Housing and Urban Development and a consortium of local corporations, Dr. Neels directed a year-long study by the Rand Corporation of strategies for privatizing municipal services in Saint Paul, Minnesota. A major component of this project was a detailed analysis of the incentives created by different financing mechanisms, organizational structures and personnel management systems. Findings of the study were published in a major report entitled *The Entrepreneurial City*.
- ◆ Dr. Neels played a major role in the preparation of expert testimony on behalf of a group of major domestic oil companies accused of conspiring to depress the prices paid to producers of a major input to tertiary oil recovery projects. This testimony focused on an examination of purchase contracts involving the defendants to establish market prices for the input in question over the alleged damage period.

- ◆ For the New York State Science and Technology Foundation, Dr. Neels participated in a project to facilitate the transfer to civilian firms and the commercial exploitation of photonics technology developed for military applications at a research center established at a major New York State military installation. This project included an assessment of the commercial value of the technology, the identification of firms in the vicinity of the research center with the research focus and capabilities to absorb the technology, and the design of institutional mechanisms for facilitating and supporting technology transfer.

Publications

“The Economic Cost of Airline Flight Delay”. With Everett B. Peterson, Nathan Barczy and Thea Graham. *Journal of Transport Economics and Policy*, Volume 47, Part 1 (January 2013): 107-121.

“Federal Funding of Transportation Improvement in BRAC Cases.” Transportation Research Board (2011).

“Private Sector: Lessons for the Public Sector” in Freight Modeling: State of the Practice in Current Practice Session of *Freight Demand Modeling Tools for Public-Sector Decision Making* in Conference Proceedings 40, Transportation Research Board, September 25-27, 2006, pp. 25,26.

“Pricing-Based Solutions to the Problem of Weather-Related Airport and Airway System Delay.” *Air Traffic Control Quarterly*, Vol 10(3) 261–284 (2002).

“Congestion, Pricing and the Economic Regulation of Airports.” Transportation Research Board, The Federal Aviation Administration, Conference on Airports in the 21st Century (April 20, 2000).

“Estimating the Effects of Display Bias in Computer Reservation Systems.” With Franklin Fisher, In *Microeconomics Essays in Theory and Applications*. Ed. Maarten-Pieter Schinkel. Cambridge University Press, 1999.

“Clinical and Economic Value of Cardiovascular Nuclear Medicine.” With Carla Mulhern. (September 1996).

“Insurance Issues and New Treatments.” *Journal of the American Dental Association*, 125 (January 1994): 45S-53S.

“Medical Cost Savings from Pentoxifylline Therapy in Chronic Occlusive Arterial Disease.” *Pharmacoeconomics* 4, No. 2, (February 1994): 130-140.

“Analyzing Rent Control: The Case of Los Angeles.” With M. P. Murray, C. P. Rydell, C. L. Barnett, and C. E. Hillestad. *Economic Inquiry* 29, No. 4 (October 1991): 601–625.

“Forecasting Intermodal Competition in a Multimodal Environment.” With Joseph Mather. *Transportation Research Record* 1139 (1987).

“Modeling Mode Choice in New Jersey.” With Joseph Mather. *Transportation Research Record* 1139 (1987).

“Direct Effects of Undermaintenance and Deterioration.” With C. Peter Rydell. In *The Rent Control Debate*. Ed. Paul L. Niebanck. Chapel Hill, NC: University of North Carolina Press, 1985.

“Energy and the Existing Stock of Housing.” With M. P. Murray. In *Energy Costs, Urban Development, and Housing*. Ed. Anthony Downs and Katherine L. Bradbury. Washington, D.C.: The Brookings Institution, 1984.

“Reducing Energy Consumption in Housing: An Assessment of Alternatives.” *International Regional Science Review* 7, 1 (May 1982).

“Production Functions for Housing Services.” *Papers of the Regional Science Association* 48 (1981).

Professional Affiliations

- ◆ American Bar Association
- ◆ American Economics Association
- ◆ Licensing Executive Society
- ◆ Transportation Research Board

Appendix B – Dr. Reynolds Curriculum Vitae

Dr. Robert J. Reynolds joined The Brattle Group in July 2004. He received his B.S. in Business Administration (Finance) from Northwestern University in 1965, and his Ph.D. in Economics from Northwestern University in 1970.

Before joining *The Brattle Group*, Dr. Reynolds was Chairman of Competition Economics, Inc., which he co-founded in 1997. From 1992-1996 he was Executive Vice President of Econsult Corporation, and previously joined ICF Consulting Associates as Senior Vice President in 1981. Dr. Reynolds held the position of Assistant Director and Senior Economist in the Economic Policy Office at the Antitrust Division of the Department of Justice where he both supervised research in antitrust policy and was actively involved in DOJ investigations. His work at DOJ included being chief staff economist on *U.S. v AT&T* until 1978. Since leaving DOJ, he has specialized in statistical and theoretical analysis of industrial organization, public and regulatory policy issues, and antitrust matters. He has been engaged to do such research by both private and government clients (federal agencies and state AGs).

Dr. Reynolds was a Visiting Associate Professor at Cornell University (1981) where he taught courses in Economics of Regulation and Microeconomic Theory. He was also a Visiting Lecturer at the University of California at Berkeley (1976-77) where he taught courses in Industrial Organization, Regulation, Antitrust, and Micro- and Macro-Economic Theory.

Dr. Reynolds was both Assistant (1969-73) and Associate (1973-75) Professors of Economics at the University of Idaho where he taught courses in Intermediate and Graduate Micro- and Macro-Economic Theory, and Graduate Seminars in Price Theory, Regulation, and Statistics.

Examples of consulting projects that Dr. Reynolds has led include the following:

Competitive Analysis and Regulation

- Analysis and testimony on market power issues in electric utility proceedings before the FERC and in U.S. District Court.
- Analysis of pricing issues in an arbitration proceeding between a regional sports network and a cable television system operator.

- Analyzes of pricing of U.S. Treasury securities offered on two electronic trading platforms, to evaluate whether incentives established by the owners of one of the platforms had harmed customers.
- Analyses of market dynamics and entry in a monopolization case in the pay telephone industry.
- Preparation of reports for court proceedings involving monopolization, predation, and discriminatory pricing issues in the airline industry.
- Analyses of the effects in terms of market share and prices of exclusionary contracts in retailing of cigarettes.
- Analysis of pricing, entry, and competition in jet engine component repair markets in *Chromalloy v. United Technologies*.
- Estimating an aerospace manufacturer's "average variable costs" of producing engine spare parts to evaluate whether planned price reductions could be construed as predatory.
- Evaluating whether price discounts offered by a manufacturer to its authorized service facilities were justified by the costs of services these facilities performed on behalf of the manufacturer.
- Various analyses of rates of return and break-even prices for jet engine manufacturing.
- Analyzing whether maintenance contracts offered by a regional Bell company were priced fairly relative to the costs of non-contract repairs.
- Analysis of antitrust and damage issues in litigation concerning devices for quieting Boeing 737 aircraft engines.
- Examination of pharmaceutical industry pricing practices in the Brand Name Prescription Drug Antitrust Litigation.
- Studies for regulatory proceedings and potential business ventures in the airline computer reservations systems industry.
- Evaluating whether a media company's decision to shut down a division in the context of a merger was financially justified.

- Analysis of pricing in airline markets in connection with litigation concerning allegations that U.S. airlines illegally signaled changes in fares.
- Estimating average and incremental costs per customer for a television monitoring business.
- A study of the prospects over the next decade for approximately 30 lines of business of a large aerospace and defense electronics company.
- A study of the electronic security industry for a client considering an acquisition.

Mergers and Acquisitions

- Assessment of merger issues, including efficiencies and exclusionary behavior, in mergers of regional telephone companies and between wireless service providers.
- Analysis of route-specific markets for a number of actual and potential mergers in the airline industry.
- Analyses of competitive issues in actual and proposed acquisitions in metal industries, including in steel, aluminum, and lead/zinc.
- Analyses of mergers and acquisitions in the petroleum industry.
- Analysis of market data in a merger between manufacturers of aerospace fasteners.
- Evaluation of benefits to passengers of the airline alliance between Northwest and Continental.
- Analysis of product markets, efficiencies, and vertical issues in acquisitions of jet engine repair firms by an engine manufacturer with its own repair facilities.
- Analysis of geographic markets, the effect of concentration on pricing, and plant divestiture options for an acquisition in the gypsum wallboard industry.
- Evaluation of vertical and horizontal competition issues for railroad mergers.
- Assessment of competitive issues and efficiency arguments relating to Northeast Utilities' acquisition of Public Service of New Hampshire.
- Examination of telemetry and defense simulation markets for Loral's acquisition of Fairchild's defense electronics business.

- Assessment of competitive issues for sales of airport slots and for potential acquisitions in the airline industry.
- Analysis of market definition, scale, and investment issues for several joint ventures and potential acquisitions in the aerospace and defense electronics industries, including jet engines, solid fuel rockets, airborne radar, and weapons control systems.
- Assessment of import competition and scale economies for Alcatel's purchase of Ericsson's fiber optics and telecommunications cable business.
- Analysis of import competition, transfer pricing issues, and scale economies in servicing equipment and in R&D for GE's acquisition of CGR's x-ray and medical imaging business.
- Examination of television markets in Turner Broadcasting's attempted acquisition of CBS.
- Evaluation of competitive issues relating to the merger between the gas and electric operations of Public Service of New Mexico.
- Analysis of scale and investment issues for a joint venture among jet engine manufacturers.

Damages and Valuation Analyses

- Development of a price model and analysis of damages in a case involving alleged price-fixing in the sale of graphite electrodes used in electric arc steel furnaces.
- Analysis of explosives pricing and damage issues in a case involving alleged price-fixing in the explosives industry.
- Estimating market values and cost of capital for cellular telecommunications properties in California.
- Damages analyses for private litigation involving pharmaceutical companies.
- Damages analyses for an aerospace services firm.
- Evaluating potential damages in connection with litigation involving devices for quieting jet aircraft engines.

- Analysis of market definition and damages in patent and antitrust litigation concerning bus air conditioning units.
- Estimating the market value of a railroad transportation leasing firm.
- Damages analyses in connection with a class action litigation involving three major domestic airlines.
- Analysis of freight transportation damages arising from conspiracy to prevent entry of new materials handling technology for iron ore on the Great Lakes.
- Estimation of damages in a contract dispute between a firm selling medical laser equipment and its manufacturing subcontractor.
- Analysis of the effect of warnings regarding adverse reactions on physician recommendations for various drugs, for a product liability case.
- Analysis of antitrust and damages issues in *Laurel Sand & Gravel v. CSX*.
- Construction and analysis of a large invoice-based data base for a price-fixing damages case in a wire products industry.
- Estimation of lost sales in a false advertising suit involving an over-the-counter drug.
- Estimation of historical market size and shares for a product liability case in the pharmaceutical industry.

PUBLICATIONS

“Archimedean Leveraging and The GE/Honeywell Transaction,” with Janusz A. Ordover, *Antitrust Law Journal*, 2002.

“Oligopolistic Product Withholding In Ricardian Markets,” with R. Masson and Ram Mudambi, *Bulletin of Economic Research*, 1994.

“Oligopoly in Advertiser - Supported Media,” with R. Masson and R. Mudambi, *Quarterly, Review of Economics and Business*, 1990.

“Efficient Regulation with Little Information: Reality in the Limit?” with J. Logan and R. Masson, *International Economic Review*, 1989.

“The Competitive Effects of Partial Equity Interests and Joint Ventures,” with B. Snapp, *International Journal of Industrial Organization*, 1987.

“Preying for Time,” with D. Easley and R. Masson, *Journal of Industrial Economics*, 1985; reprinted in Geroski, Philips, and Uplh, eds., *Oligopoly, Competition and Welfare*, Basil Blackwell, 1985.

“Competition and Antitrust in the Petroleum Industry: An Application of the Merger Guidelines,” with G. Hay, in *Antitrust and Regulation: Essays in Memory of John J. McGowan*, F. Fisher, editor, MIT Press, 1985.

“Contestable Markets: An Uprising in Economics, A Comment,” with M. Schwartz, *American Economic Review*, 1983.

“Losses from Merger: The Effects of a Change in Industry Structure on Cournot-Nash Equilibrium,” with S. Salant and S. Switzer, *Quarterly Journal of Economics*, 1983; reprinted in A. Daugherty, editor, *Cournot Oligopoly, Characterizations and Applications*, Cambridge University Press, 1988; reprinted in L. Philips, editor, *Applied Industrial Economics*, Cambridge University Press, 1998.

“The Effects of Antitrust Enforcement: Theory and Measurement,” *Georgetown Law Journal*, June 1980.

“Critique of J. Fred Weston's ‘Industrial Concentration, Mergers and Growth’,” *Conglomerate Mergers and Public Policy*, 1981.

“The Effects of Regulation: The Case of Oil Pipelines,” invited paper, *American Statistical Association, Proceedings*, 1979.

“Appraising Alternatives to Regulation for Natural Monopolies,” with L. Lewis, in *Oil Pipelines and Public Policy*, American Enterprise Institute, 1979.

“Statistical Studies of Antitrust Enforcement,” with R. Masson, invited paper, *American Statistical Association Papers and Proceedings*, 1977.

“The Economics of Potential Competition,” with B. Reeves, in Masson and Qualls, eds., *Essays in Industrial Organization in Honor of Joe Bain*, Ballinger, 1976; reprinted in Siegfried and Calvani, eds., *Economic Analysis and Antitrust Law*, Little Brown, 1978.

OTHER RESEARCH ACTIVITIES

Dr. Reynolds has presented papers at various meetings of the Econometric Society, NBER Conferences in Industrial Organization, other professional meetings and various universities [e.g., Yale, Berkeley, Stanford, Pennsylvania, Cornell, Toronto, International Institute for Management (Berlin)].

Dr. Reynolds has served as:

- Chairman and discussant at meetings of the Econometric Society and Telecommunications Policy Research Conference.
- Member, Editorial Advisory Board, *Managerial and Decision Economics*.
- Reviewer for the National Science Foundation, *Rand Journal of Economics*, *International Economic Review*, *International Journal of Industrial Organization*, *Journal of Industrial Economics*, and *American Economic Review*.
- Invited participant in the University of Chicago Conference on Regulation, 1970; Dartmouth Conference on Regulation, 1972; University of Pennsylvania Conference on Antitrust Law and Economics, 1978; University of Virginia-MSS Conference on New Directions in Theoretical Industrial Organization, 1979; NBER (Northwestern) Conference on Information and Strategic Behavior in Economics, 1980; NBER (Berkeley) Conference in Theoretical Industrial Organization, 1980; Oxford Conference in Theoretical Industrial Organization, 1984.

PROFESSIONAL AFFILIATIONS

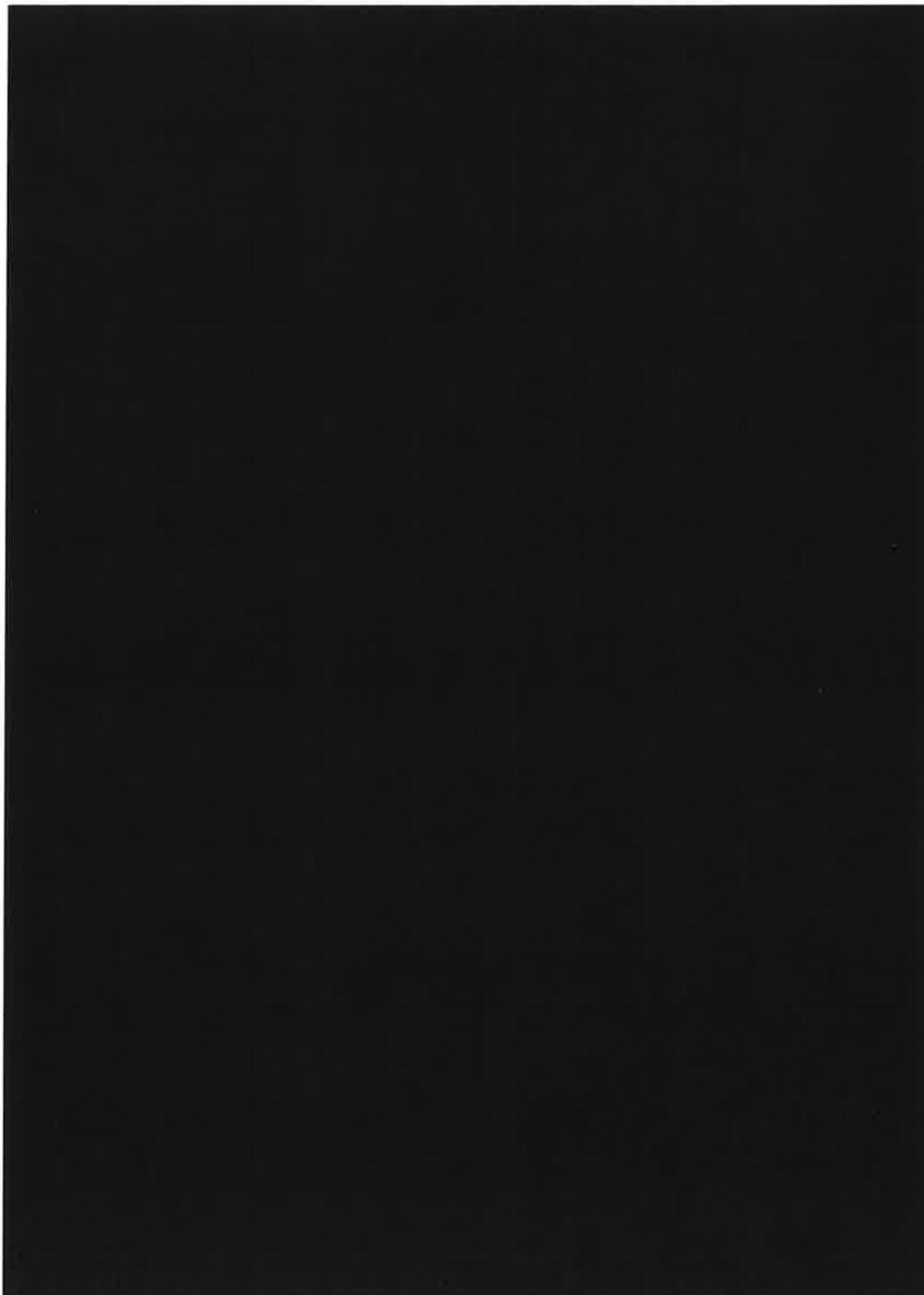
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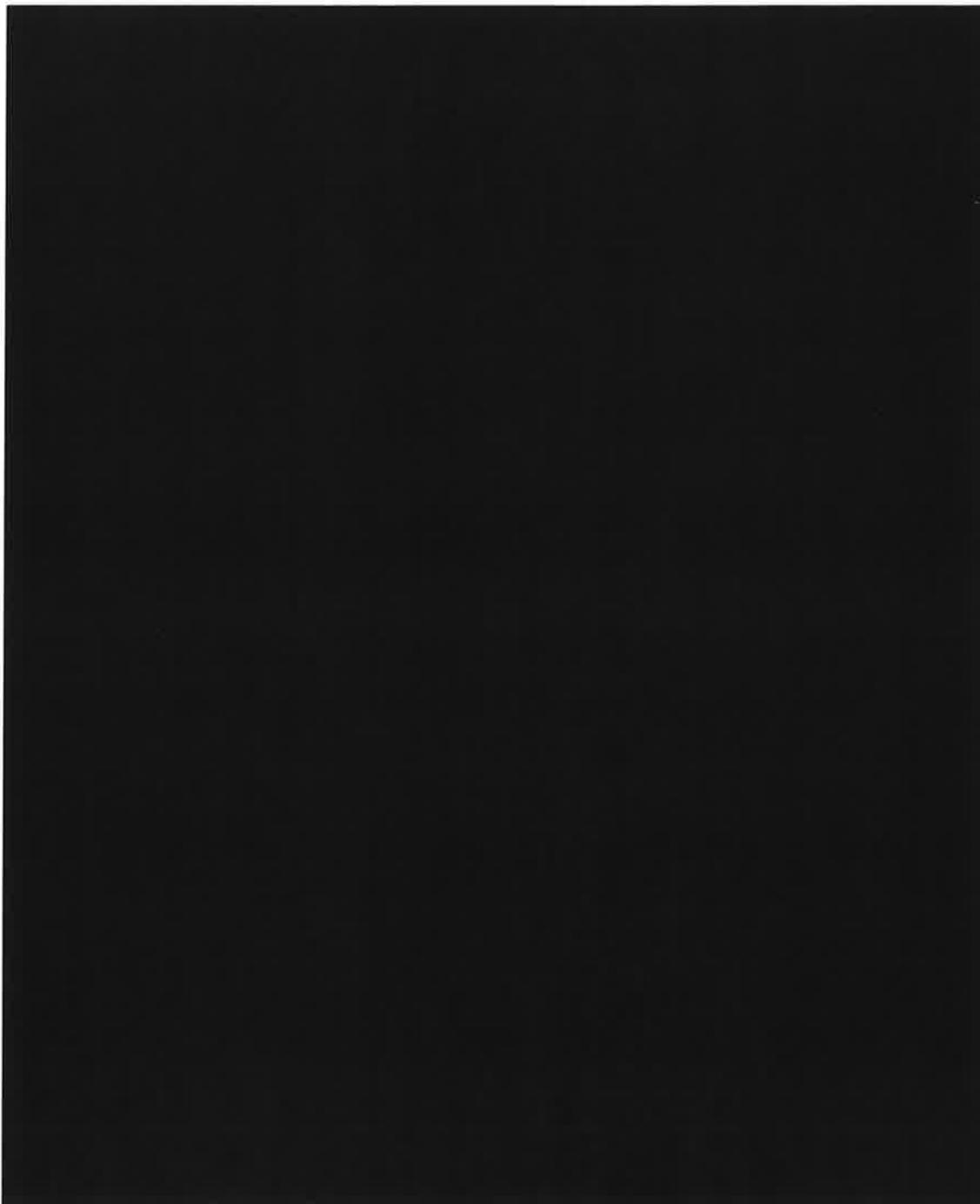
- American Economic Association
- Econometric Society
- Royal Economic Society
- AAAS
- American Statistical Association
- European Association for Research in Industrial Economics (EARIE)
- Society for the Promotion of Economic Theory

- Mathematical Association of America
- American Mathematical Association

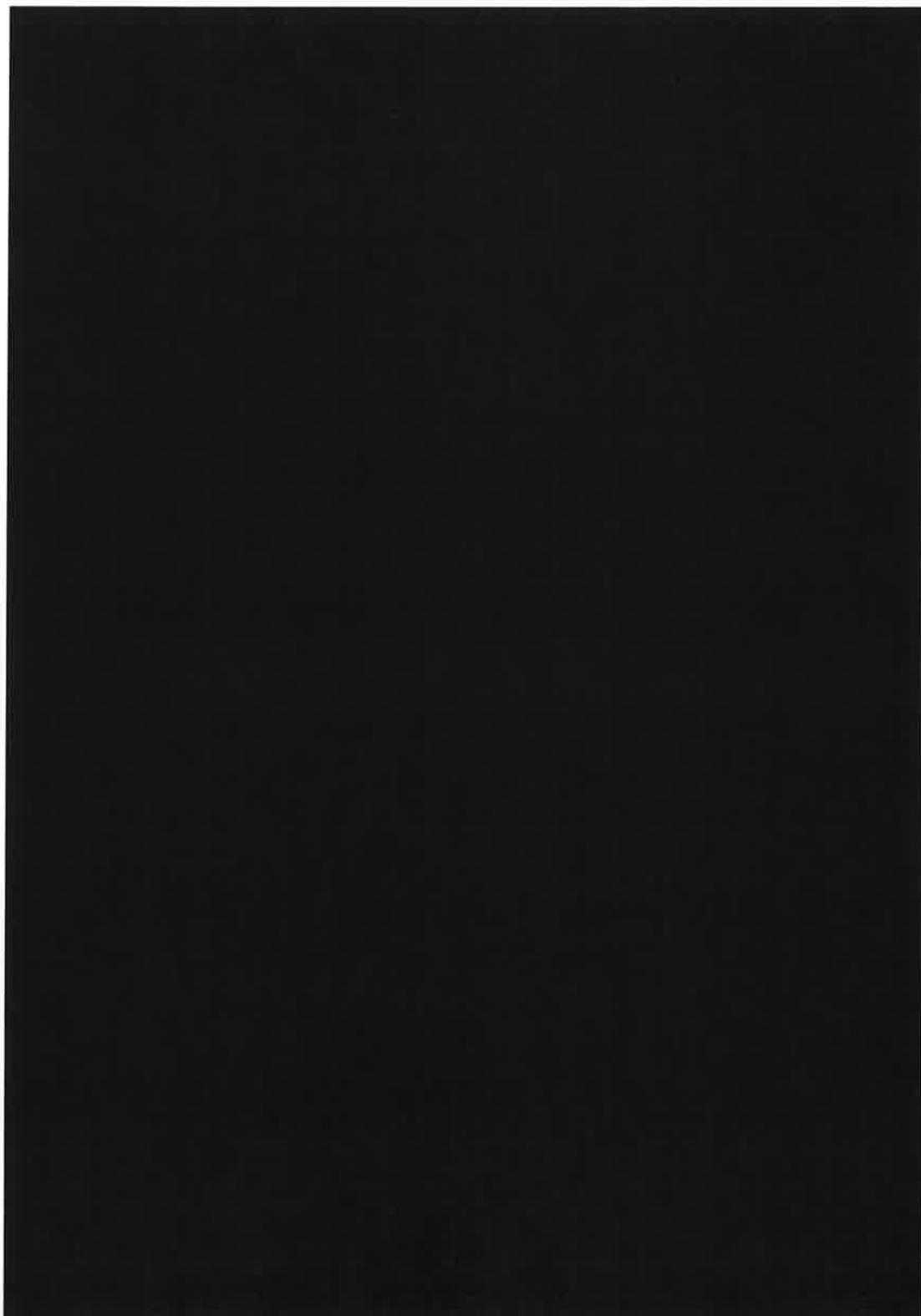
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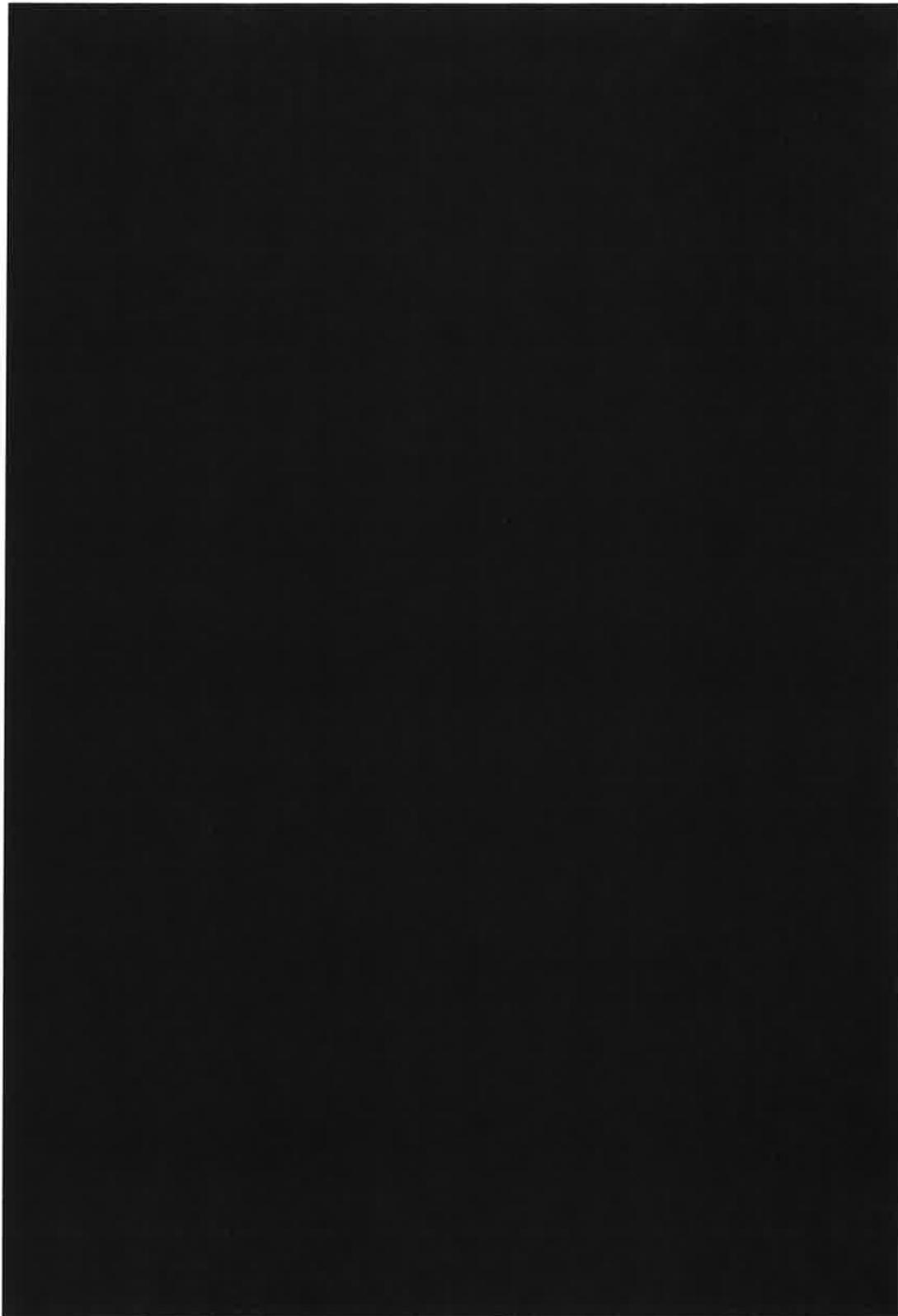




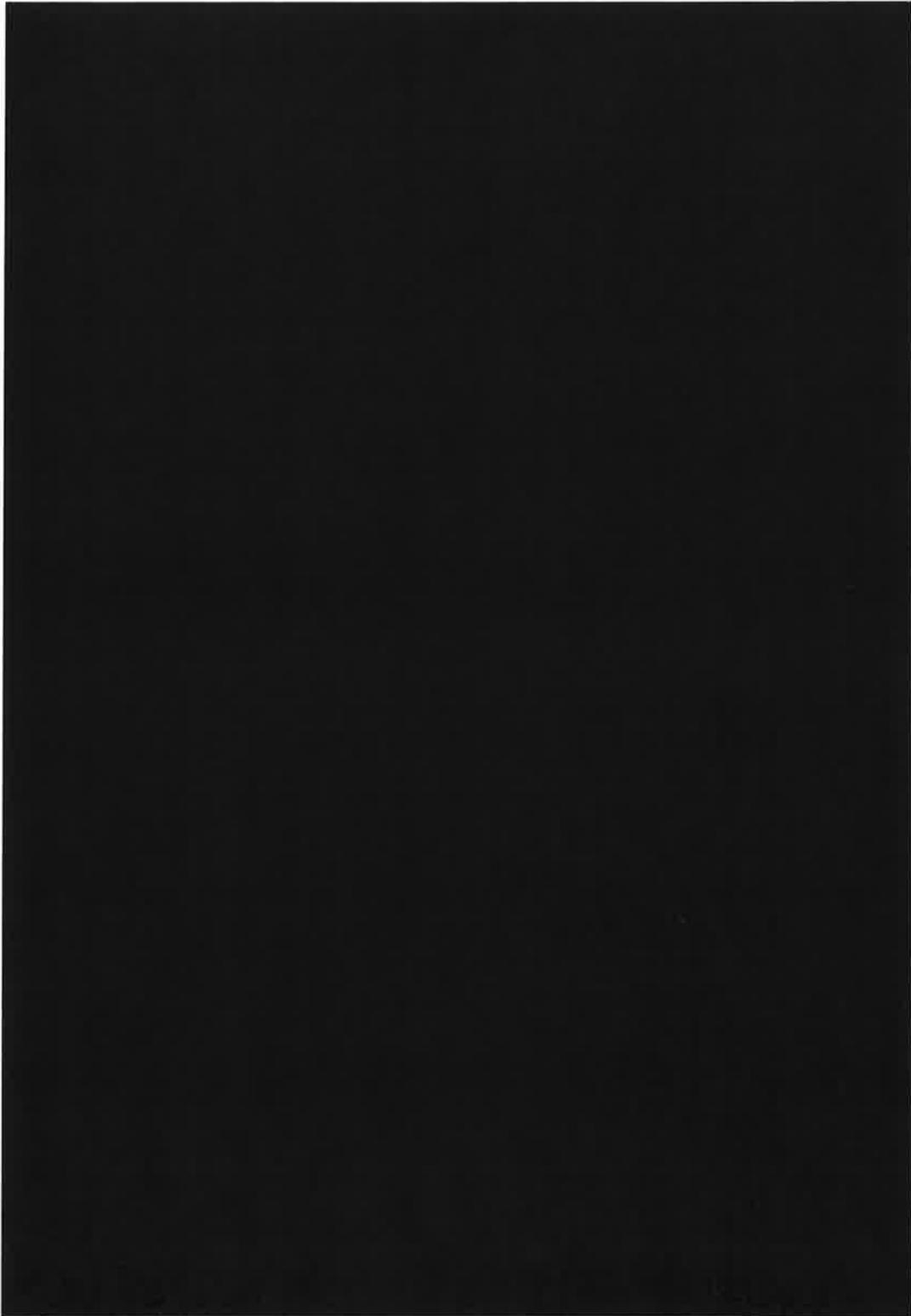


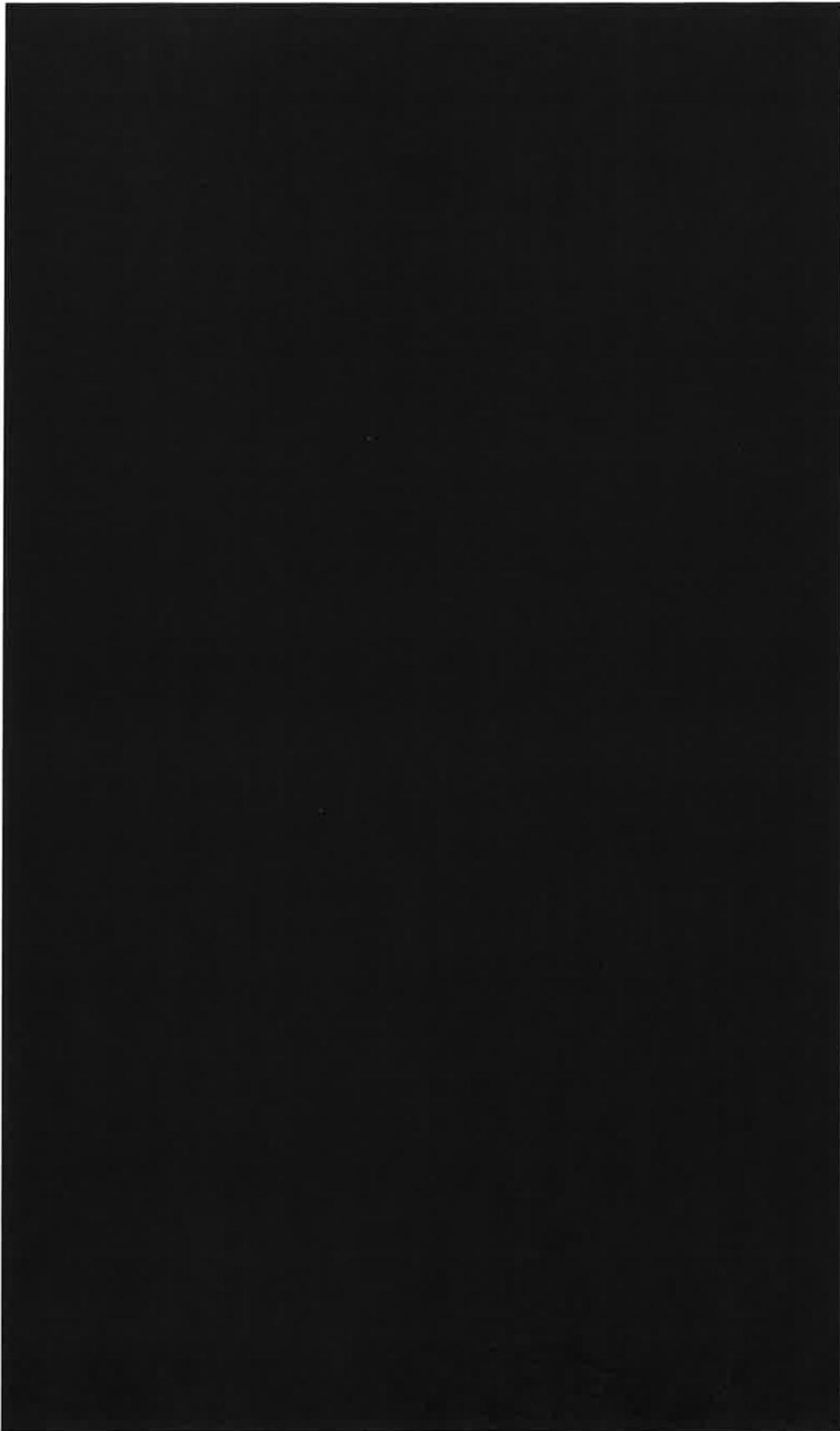


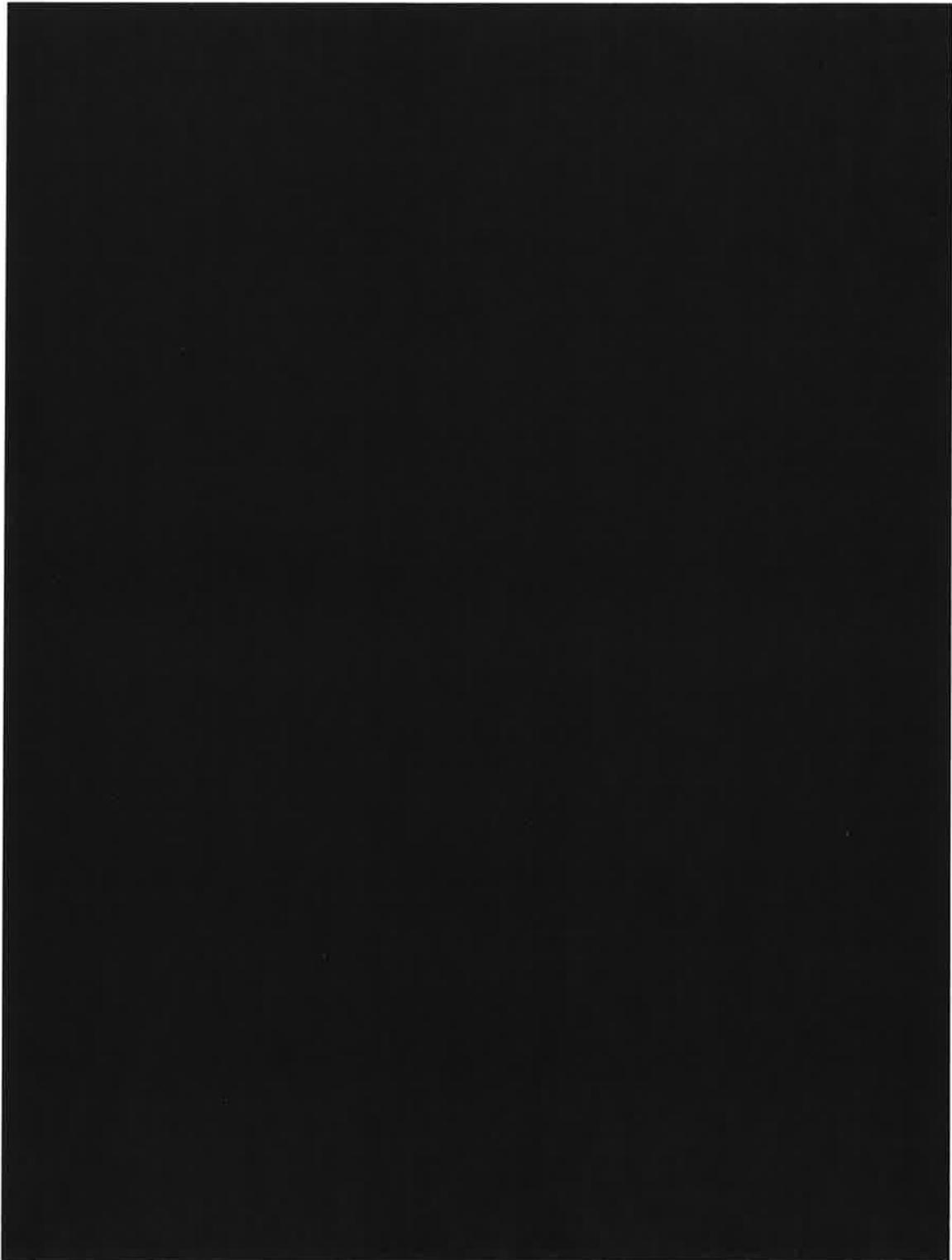


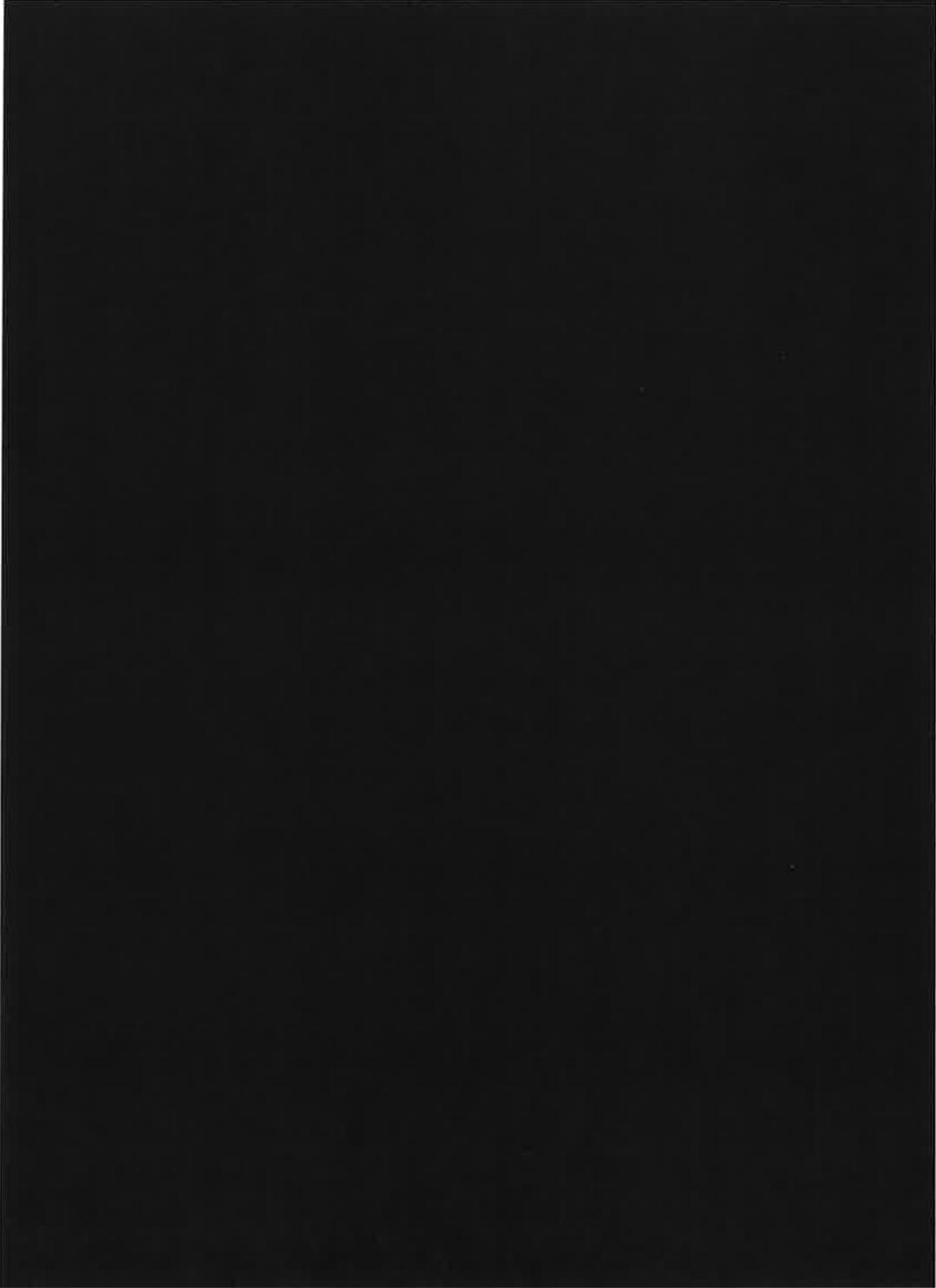








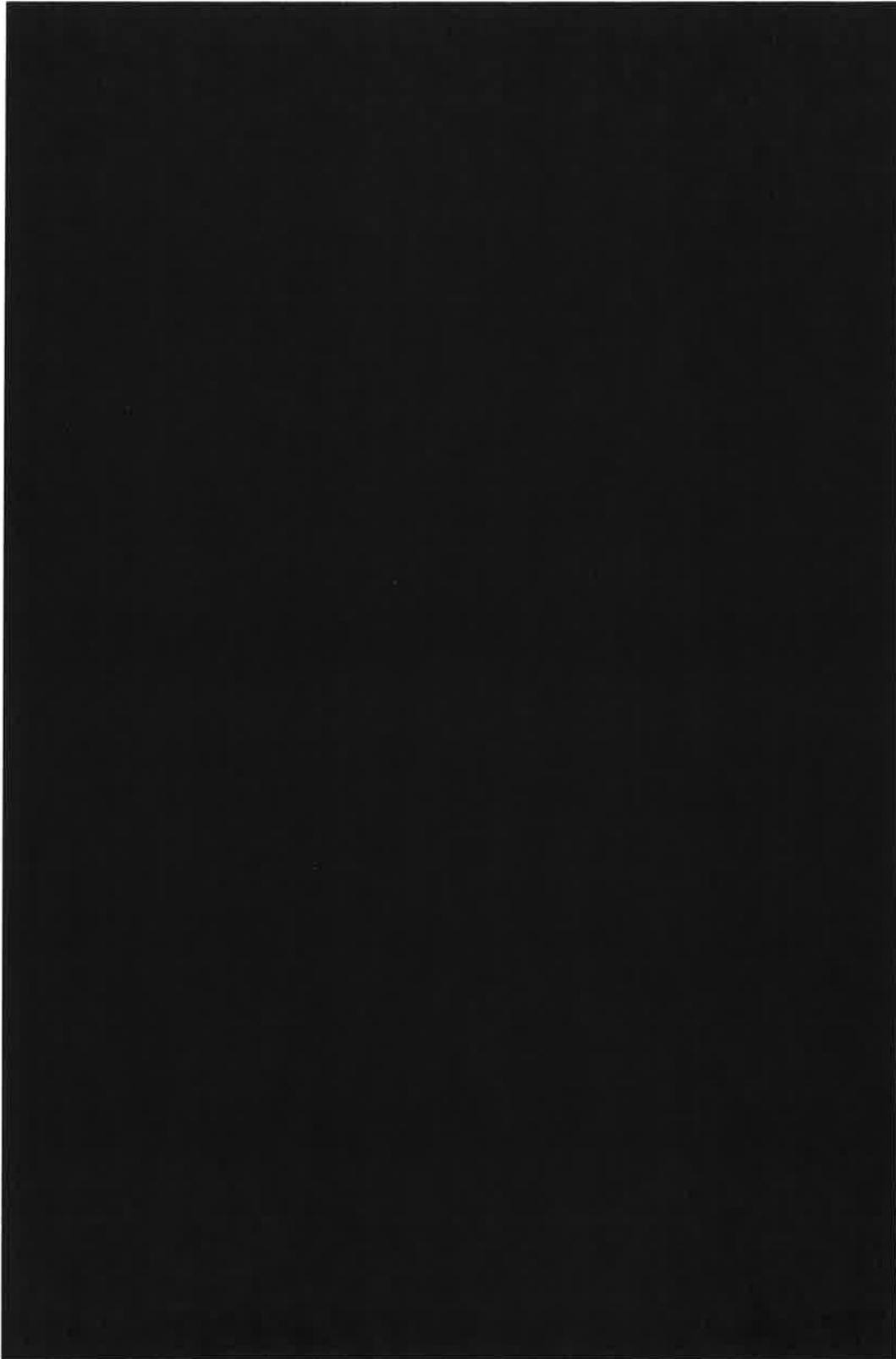




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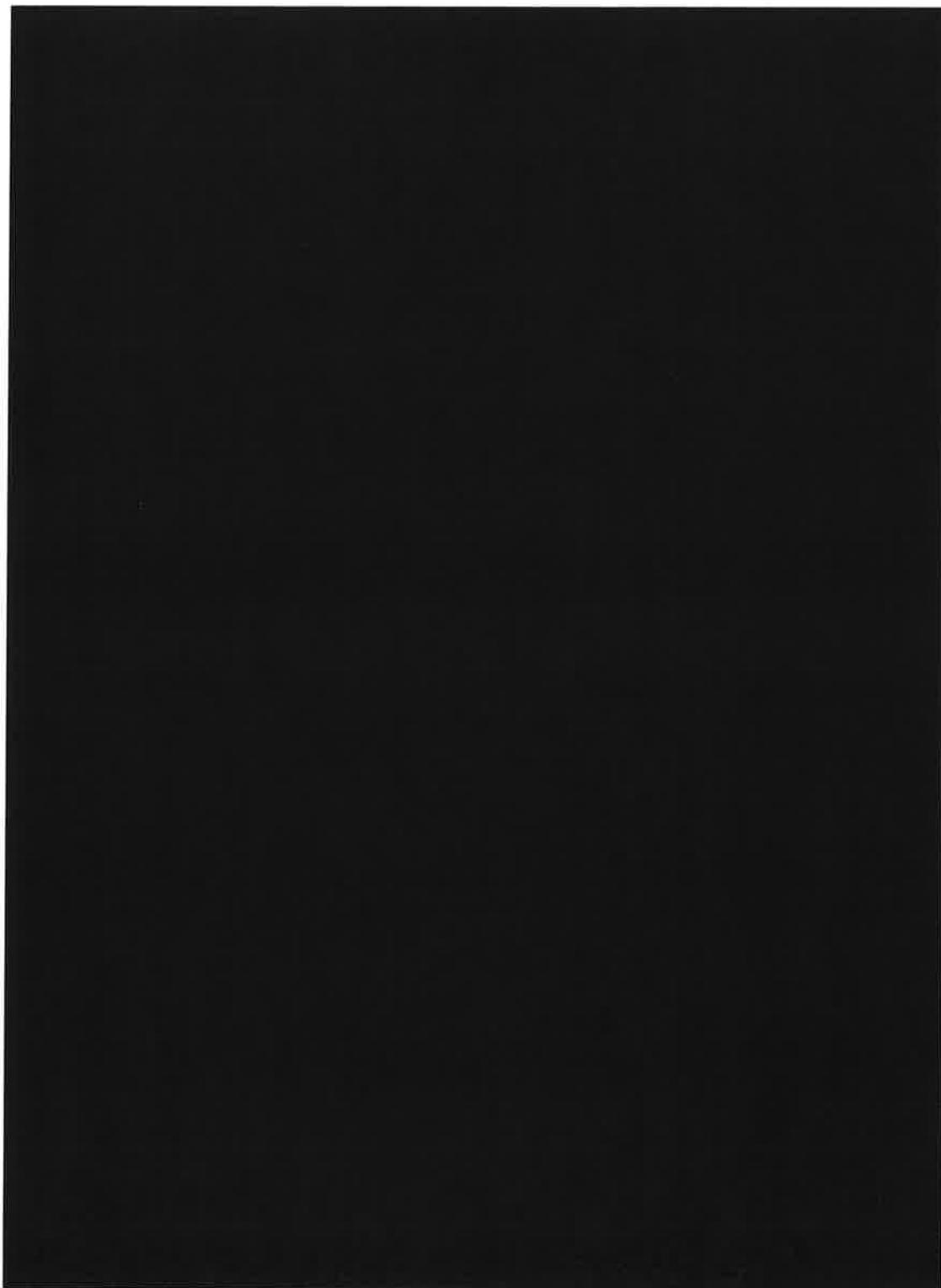


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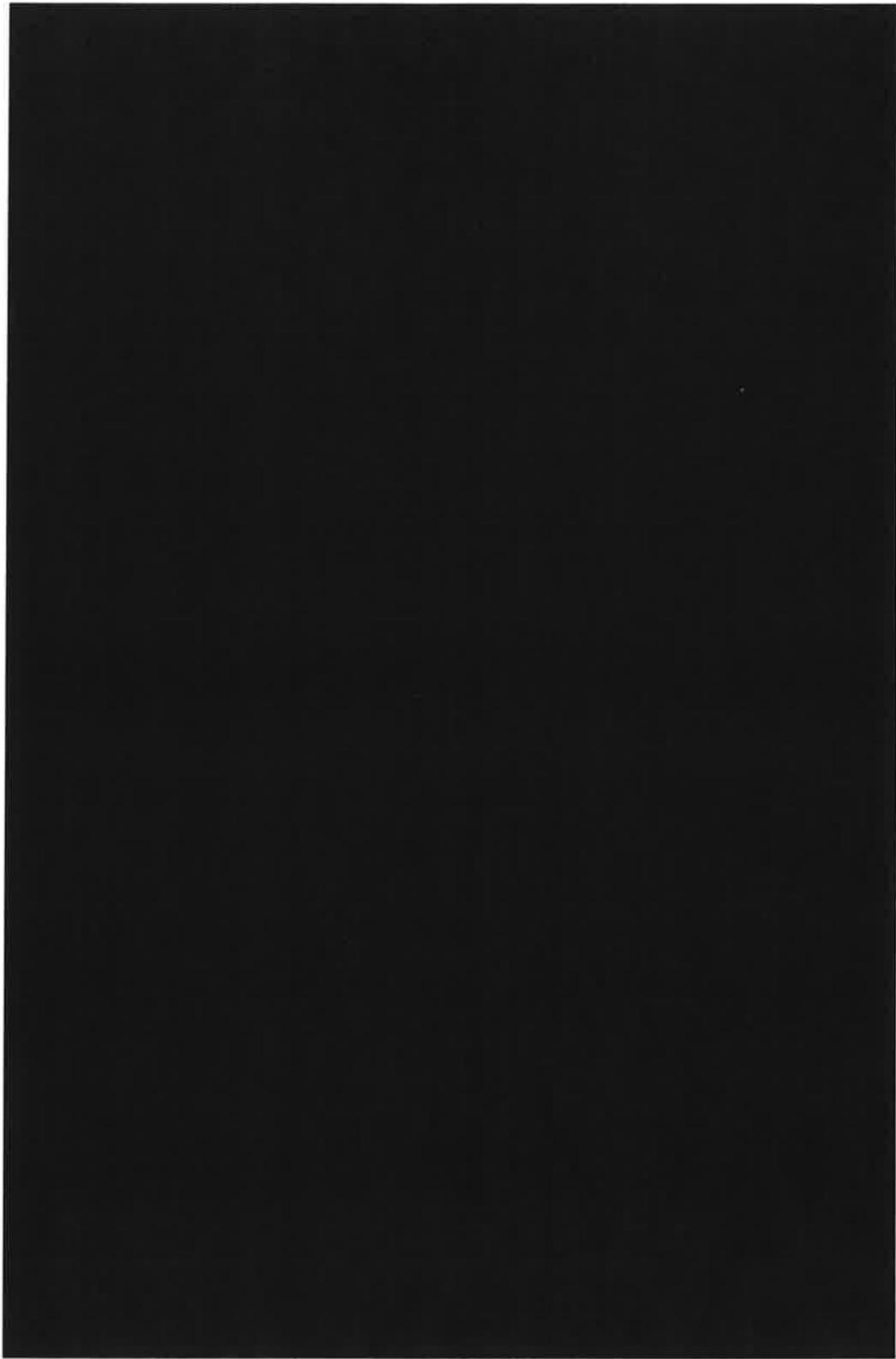


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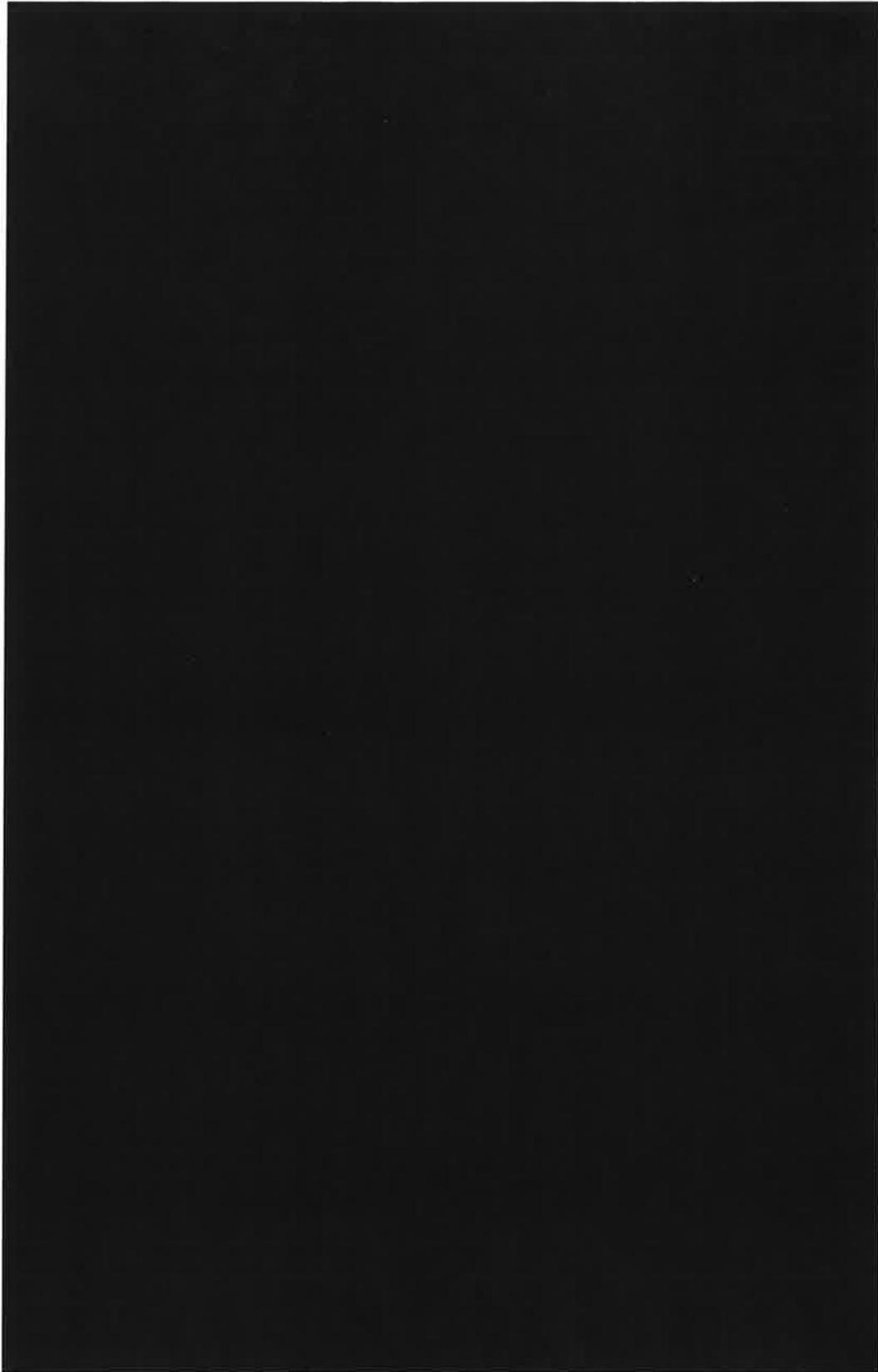




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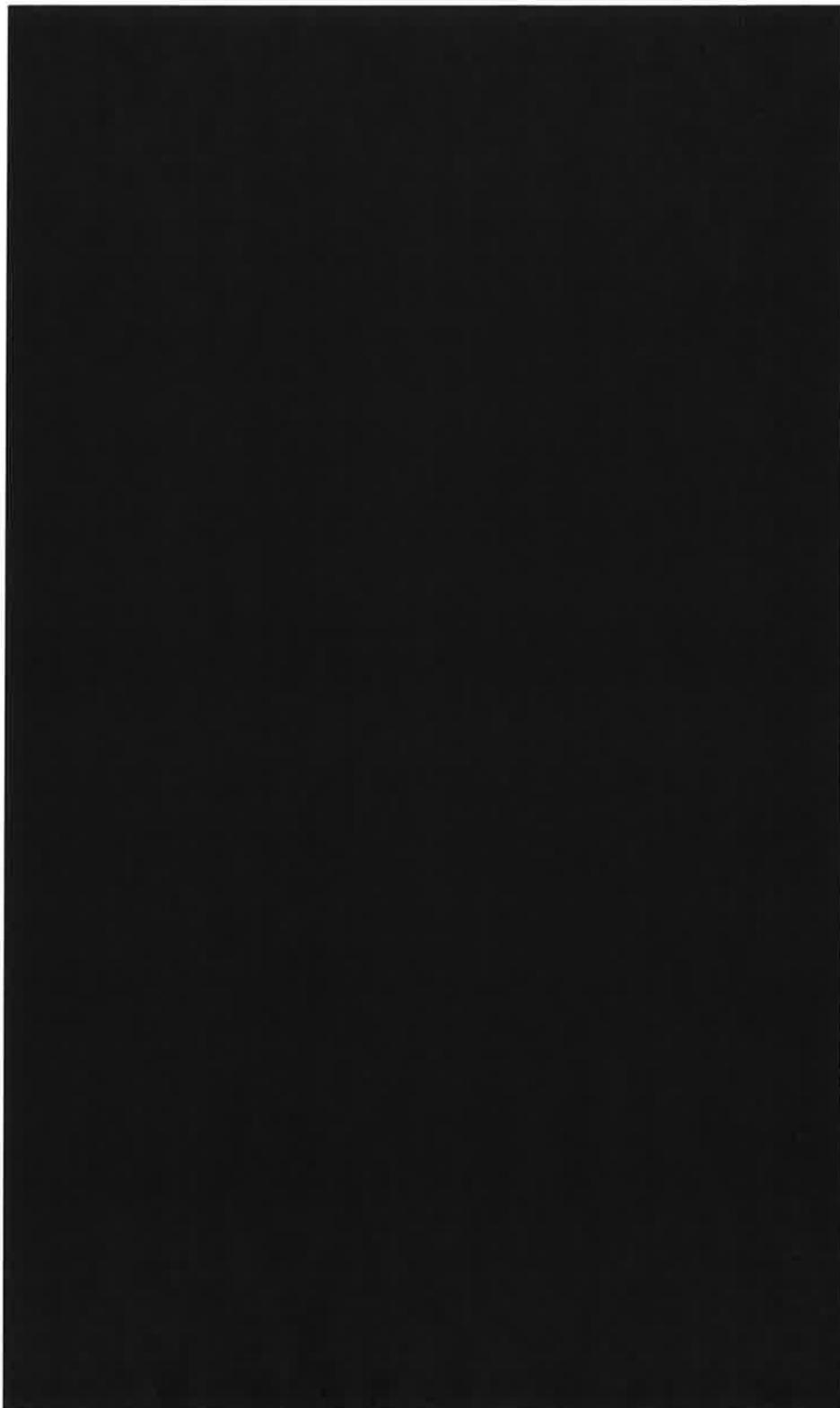


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Verification

I, Kevin Neels, verify under penalty of perjury that I have prepared and read this Verified Statement to be filed on behalf of Kansas City Southern Railway in the aforementioned proceeding before the Surface Transportation Board, that I know the contents thereof, and that the same is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on August 24, 2015



Kevin Neels

Verification

I, Robert J. Reynolds, verify under penalty of perjury that I have prepared and read this Verified Statement to be filed on behalf of Kansas City Southern Railway in the aforementioned proceeding before the Surface Transportation Board, that I know the contents thereof, and that the same is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on August 24, 2015



Robert J. Reynolds

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

REPLY OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

EXHIBIT B

**JOINT VERIFIED STATEMENT
OF STEVE SULLIVAN AND JOHN IRELAND**

Joint Verified Statement of Steve Sullivan and John Ireland

We are Steve Sullivan and John Ireland, both consultants at R.L. Banks & Associates (RLBA), a consulting firm based in Arlington, VA specializing in railroad economics, service planning and litigation support.

Mr. Sullivan is currently RLBA's Managing Director and has been a transportation professional for his entire professional career, with 35 years of railroad operating and executive management experience. Prior to joining RLBA in 2013, Mr. Sullivan served as the Vice President and Executive Director of The American Short Line and Regional Railroad Association (ASLRRA) for twelve years. In that capacity he represented over 550 Class II and Class III railroads on a number of topics that included interchange issues, operating compliance, customer service disputes and industry car movement standards/performance.

Before ASLRRA, Mr. Sullivan worked for Conrail for 24 years. He started his railroad career in train service as a brakeman and conductor before being promoted to Terminal Trainmaster at Stanley Yard, a major hump yard in Toledo, OH. He later served as Supervisor of Rules and Operating Practices and as District Superintendent of Operations. Mr. Sullivan then transitioned to Conrail's corporate management team, holding the titles of Manager of Commercial Planning, Manager of Capital Planning, Director of Strategic Planning and Director of Corporate Strategy. Through these positions he has become well acquainted with train, yard, and terminal railroad operations.

Mr. Ireland is currently a rail transportation project manager with RLBA. Since joining RLBA in 2014, he has specialized in railroad operations and litigation support, in the process conducting several investigations in support of client's filings before the Surface Transportation

Board. Prior to joining RLBA, he served in various operational supervisory roles as an officer in the United States Navy. He is a graduate of Carnegie Mellon University of Pittsburgh, PA.

RLBA has been retained to provide expert testimony in the proceeding before the STB of BNSF Railway (BNSF) against The Kansas City Southern Railway Company (KCS) and Union Pacific Railroad Company (UP), concerning an application for terminal trackage rights over a jointly owned (KCS and UP) segment of railroad, which this statement collectively refers to as the Rosebluff Lead, in the greater Lake Charles, LA area. Specifically, RLBA was asked to consider the operational impacts to KCS as a result of the potential introduction of BNSF direct service into the Rosebluff Lead as it pertains to the authority given to the Surface Transportation Board under Title 49, U.S. Code, Sect. 11102.

In preparation of this statement, we have both reviewed the previously filed documents and evidence pertaining to this proceeding. In addition, Mr. Ireland conducted a four day, onsite investigation of railroad operations in the vicinity of the Rosebluff Lead under the direction of Mr. Sullivan. Mr. Ireland also interviewed two local KCS supervisors; Mr. James R. Meterer, KCS Terminal Trainmaster, with 11 years of railroad experience and Mr. Jimmy Wayne Scott, KCS Senior Trainmaster, with 22 years of railroad experience. The results of his investigation and interviews are incorporated into this verified statement.

Description of the Rosebluff Lead

The Rosebluff Lead is jointly owned and operated by KCS and UP. Understanding the large volumes of traffic and complexity of operations in the Lake Charles area, KCS and UP's predecessors agreed on a number of operating procedures to promote effective service. Beginning in 1981, Southern Pacific (SP) and KCS divided the Rosebluff Lead into two separate switching zones. Each railroad was responsible for one of the zones, offering reciprocal

switching rights to the customers in the zone not served by the other railroad. The agreement provided that SP and KCS would change which zone they switched every two years, but as the dynamics of the Rosebluff Lead changed, switching in the zones was adjusted to meet customer demands. In 1999, KCS and UP agreed to stop alternating which zone they switched, with KCS continuing to switch Zone 1 and UP switching Zone 2. This agreement defines the current boundaries of the two zones.

The Rosebluff Lead actually consists of two separate components; Rosebluff Yard and the Rosebluff Industrial Track. All of the Zone 1 customers on the south side of Interstate 10 are located in, or accessed through, Rosebluff Yard. Conversely, all Zone 2 customers are located on the Rosebluff Industrial Track.

The Rosebluff Yard is confined by Interstate 10 immediately to the North and a public road and industrial facilities immediately to the South. Rosebluff Yard primarily serves as an industrial yard, connecting to the KCS Lake Charles Subdivision and UP Lafayette Subdivision (alternatively referred to as the 50/50 Line) to the east with the Rosebluff Industrial Track to the southwest. Because of the reciprocal switching agreement between KCS and UP, Rosebluff Yard also functions as the primary interchange point between KCS and UP in the Lake Charles area. Additionally, many UP crews assigned to exclusively work Zone 2 are stationed out of the Rosebluff Yard office at the east end of the yard. As such, it is common-place for crew changes to take place in the yard, adding to the complexity of operations. While traffic on the Rosebluff Lead has continued to grow, the physical limitations of Rosebluff Yard have prevented any expansion. As such, the yard operates at capacity with little or no storage space for anything other than cars in transit in and out of the yard.

Operations in Rosebluff Yard are governed by a unique joint operating arrangement between KCS and UP. Each railroad has access to the yard for twelve hours a day. The KCS operating window extends from 6:00PM to 6:00AM, while the UP window is 6:00AM to 6:00PM. According to the agreement defining these operations, only the respective railroad may operate in Rosebluff Yard during its appropriate window. As such, between 6PM and 6AM, the on-going UP operations on the Rosebluff Industrial Track and Zone 2 below Rosebluff Yard are essentially an island isolated from the rest of the UP system, as no UP train from Zone 2 can reach the Lafayette Subdivision while KCS is occupying Rosebluff Yard. Since all Zone 1 customers on the south side of Interstate 10 are accessed via the Rosebluff Yard, KCS effectively cannot conduct any kind of operations on the Rosebluff Lead during the UP 6AM to 6PM window.

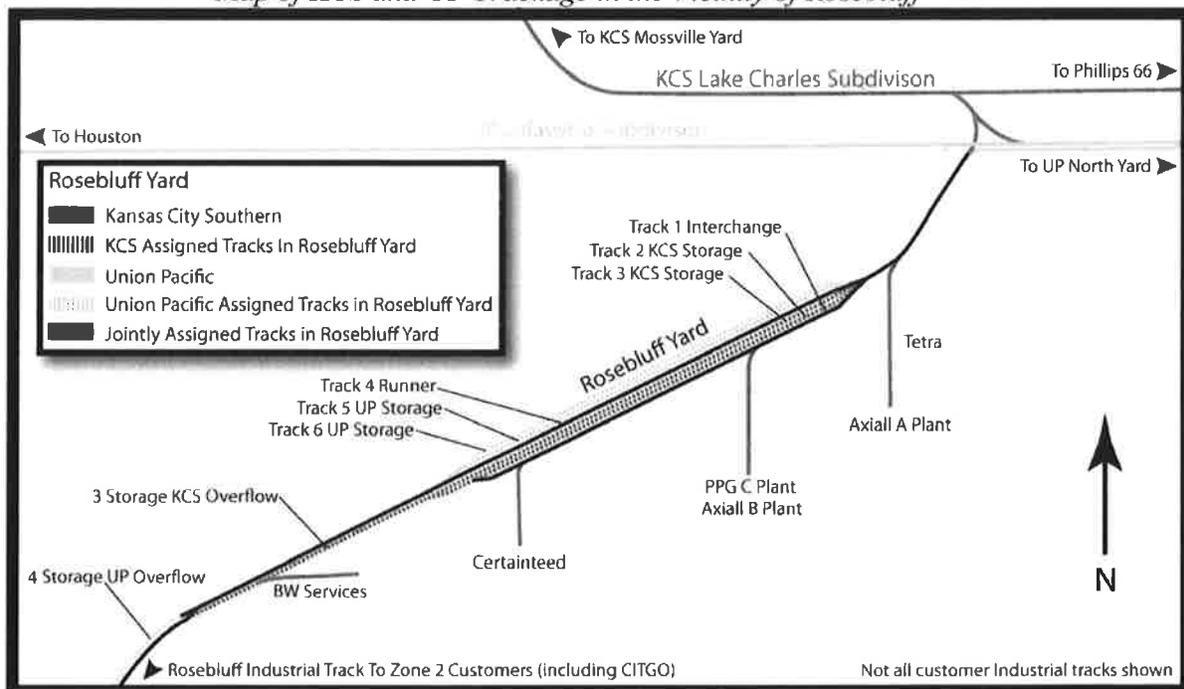
Rosebluff Yard consists of six double ended tracks ranging from 4,700 to 6,600 feet in approximate length, identified as Tracks 1 through 6. Additionally, a second track and crossover paralleling the running track on the west end of the yard offer limited additional capacity and are identified as 3 Storage and 4 Storage. Figure 1, shown on the following page, depicts the layout of the yard.

In theory, each track in the yard has a defined purpose. Tracks 2 and 3 are used by KCS as staging for delivery and pick up. The same is true for UP on Tracks 5 and 6. Track 4 is designated as a runner track which both railroads attempt to leave clear at the end of their window to allow easy access for the other railroad. Track 1 is used as the interchange track between UP and KCS, but also connects to the lead tracks for several of the largest customers in Zone 1. KCS' 3 Storage and UP's 4 Storage tracks are used as overflow for the main yard, a frequent occurrence. These defined track uses generally only apply when cycling the yard from

one railroad to the next; both railroads try to “leave it the way they found it,” if you will. While switching the yard, both railroads will utilize all of the yard tracks as available and as needed to most efficiently complete their work.

The Rosebluff Industrial Track continues southwest out of Rosebluff Yard and extends approximately seven miles into the heavily industrialized West Lake area. To access the Rosebluff Industrial Track, all trains must first pass through Rosebluff Yard. The majority of customers accessed off the Rosebluff Industrial Track are petrochemical or petroleum industries which receive large quantities of rail traffic. Despite the variety of spurs and customers, the Rosebluff Industrial Track itself is single track, with limited areas to sort cars. As such, any switching for Zone 2 customers must either be done in Rosebluff Yard or pre-blocked elsewhere on the UP system.

Figure 1
Map of KCS and UP Trackage in the Vicinity of Rosebluff Yard



KCS Operations in Rosebluff Lead and the Lake Charles, LA Area

KCS operations in the Lake Charles Area are based out of Mossville Yard, approximately 3.7 railroad miles northwest of the crossing of the UP Lafayette Subdivision and four railroad miles from the Rosebluff Yard crew building. The Mossville Yard consists of 15 stub end tracks ranging from 1,850 to 2,850 feet in approximate length, and five double ended tracks ranging from 3,800 to 5,900 feet in approximate length (including a main track through the length of the yard).

After reviewing KCS system timetable No 11, it is RLBA's understanding that Mossville Yard is located on KCS' Lake Charles Subdivision. North of the yard, the Lake Charles Subdivision is single track with one customer (the Roy S. Nelson Generating Plant 2.7 track miles north of Mossville Yard) and is controlled by Centralized Traffic Control, connecting with the KCS mainline at Dequincy, LA, 16.4 miles to the north. There is also a controlled siding and additional storage track at Buhler, LA, 6.7 track miles north of Mossville Yard, both of which are approximately 7,300 feet long and double ended. Both tracks can be used for storing cars and/or trains.

Traffic north of Mossville primarily consists of a single, daily Mossville to Shreveport Manifest train (symbol MSHLC inbound to Mossville and MLCSH outbound) and several weekly unit coal trains to the Roy S. Nelson Generating Plant, 2.7 miles north of Mossville Yard. South of Mossville, the Lake Charles Subdivision is single track and governed by General Code of Operating Rules (GCOR)¹ Rule 6.28 (movement other than main track). This southern section

¹ GCOR is a commonly used set of railroad operating rules, utilized by UP, KCS and BNSF, though each has their own modifications.

of the Lake Charles Subdivision accesses the Rosebluff Lead via an at-grade crossing of the UP Lafayette Subdivision.

According to Mr. Meteer, on a typical weekday, seven KCS crews come on duty at Mossville. KCS operations in the yard and the entire Lake Charles area are centered around the outbound MLCSH and its inbound counterpart MSHLC, which combine to provide a six day a week manifest train connecting Mossville Yard operations to the rest of the KCS system. The inbound MSHLC arrives into Mossville at approximately 11:00PM Sunday through Friday, while the outbound MLCSH comes on duty at 1:00PM and generally departs by 5:00PM Monday through Saturday. Of the six other crews, two are yard jobs dedicated to sorting cars received from the inbound MSHLC and building the outbound MLCSH. The remaining four are responsible for industrial switching. Two of these crews work the various industries north of the UP Lafayette Subdivision, while the remaining two, RLC210 and RLC304 are dedicated to switching Rosebluff Yard and the adjacent Zone 1 customers on the south side of the Lafayette Subdivision.

RLC210 comes on duty at Mossville at 5:00PM seven days a week. The crew uses the hour before the beginning of the KCS operating window in Rosebluff Yard to complete various administrative duties and assemble the awaiting block of cars in Mossville. At 6:00PM and upon determining that UP has completed its work in Rosebluff Yard (which often times is after the 6:00PM end of the UP operating window), RLC210 transits the southern end of the Lake Charles Subdivision to the Rosebluff Lead. To do this, RLC210 must request that two protective gates across the track be raised at the Phillips 66 facility, as well as operate an automatic interlocking machine to receive permission to cross the UP Lafayette Subdivision at grade. Upon arriving at Rosebluff Yard, RLC210 picks up any cars left by UP train YAK63 at the yard for Zone 1

customers and proceeds to sort both the UP and Mossville originated cars according to customer. Upon completion of this sorting, RLC210 services CertainTeed (accessed via Track 1) five days a week and BW Services (via Track 3 Storage) several times a week. Upon completion of their work, RLC210 leaves its motive power in Rosebluff Yard for the RLC304 crew.

RLC304 comes on duty at Mossville just before midnight Monday through Friday (recently changed since Mr. Ireland's site visit, during which RLC304 came on duty at 11:00PM). Most of the time, the crew must wait for RLC210 to complete its work in Rosebluff Yard, a situation which is often compounded with RLC210 being delayed by UP switching operations in Rosebluff Yard after 6:00PM. Once RLC210 has completed its work, the RLC304 crew is transported to Rosebluff Yard by motor vehicle to begin their work. RLC304 is responsible for working the largest customers in Zone 1 – Tetra, Axial A plant, Axial B plant and PPG C plant. Each of these customers present operational service challenges. The spur to both Axial A plant and Tetra connects to the lead track between Rosebluff Yard and the UP Lafayette Subdivision, limiting the number of cars in a single cut to approximately 22 at a single time while also blocking passage out of the entire Rosebluff Lead to either the Lake Charles or Lafayette Subdivisions. Axial B plant and PPG C plant are both accessed off of Track 1 in Rosebluff Yard, demanding that Track 1 be clear of cars in order to switch these customers. After completing its customer work, RLC304 collects any Zone 2 KCS cars delivered earlier by UP, and along with the cars collected by KCS in Zone 1 returns to Mossville to make its connection with the MLC SH.

The Complexity of Joint Operations in the Rosebluff Lead

As displayed in Figure 2 on the following page, there are a total of ten different jobs assigned to operate in Rosebluff Lead and Industrial Track for each 24 hour period Monday to

Friday. It is not uncommon for three, or even up to four, jobs to simultaneously be working on the Rosebluff Lead. Between KCS and UP, the ten combined jobs responsible for the Rosebluff Lead originate and deliver cars daily for four manifest trains each way in and out of the Lake Charles area. Additionally, it is important to remember that not only is the yard used for interchange between the two railroads, it is also the only location on the entire Rosebluff Lead where cars can be efficiently sorted and organized for delivery to respective customers for both UP and KCS. To compound the operational challenges even more, several of the largest customers in both zones are accessed directly off of Track 1 in Rosebluff Yard, essentially reducing the yard from an already inadequate six tracks to an even more constraining five during large portions of the KCS operating window. When considering that all this activity occurs on a single track stretch of railroad generating in excess of 150,000 carloads annually in both zones, it becomes clear that strong coordination between UP and KCS is essential to maintain an effective level of service to customers.

Figure 2 (UP-WLC-0000397)



Mr. Scott and Mr. Meter report that coordination of daily operations between KCS and UP are handled on the local level. KCS Mossville based trainmasters regularly communicate with their UP North Yard counterparts to understand each other's requirements and limitations in Rosebluff Yard on any particular day. As RLC210 begins preparing to depart for Rosebluff Yard, the train's conductor will drive to Rosebluff Yard to speak with his or her UP counterpart to determine when that train will clear the yard. The relatively close proximity of UP and KCS facilities in Lake Charles allows this type of intensive and constant front line coordination.

Keeping operations running smoothly in Rosebluff Yard requires not only close coordination, but also a firm understanding of the daily operating challenges. Despite the presence of a well-established operating pattern governing KCS and UP operations in the Rosebluff Lead, both RLBA's onsite observations and interviews with local operating officials

confirm what any knowledgeable railroad operating professional already knows: things rarely go to plan. Every day during RLBA's onsite visit, both UP and KCS operations ran into the other's predefined operating window. Historical data collected by KCS (displayed on the next page) suggest that these observations were not an anomaly but rather the norm. Local KCS and UP supervisors acknowledge these overruns into each other's operating windows are commonplace.

These overruns are not by choice, but rather an operational reality in an environment as constrained as Rosebluff Yard. Ideally, both railroads would complete their work in their assigned windows. In practice, if one railroad, for example UP, has not completed working in Rosebluff Yard in its defined operating window, there is no practical recourse for KCS other than to simply wait until UP is finished. If KCS RLC210 is delayed, there is a strong likelihood that RLC304 may not complete its work on time and in turn delay UP from entering the yard at the beginning of UP's morning operating window. Once this cycle begins, it is difficult to stop and can last for weeks. Customers have delivery timelines that must be met, more cars are consistently heading to Lake Charles from across both the KCS, UP, and BNSF systems and storing cars for Rosebluff Lead customers in other Lake Charles area yards compound capacity and operational difficulties. In short, there is no method to establish normal operations until volume levels dissipate on their own.

Figure 3
Time Out of Rosebluff Yard of UP and KCS during January 2015, as recorded by KCS Managers

UP Time Out of Rosebluff Yard, January 2015				KCS Time Out of Rosebluff Yard, January 2015			
1-Jan	--	17-Jan	17:12	1-Jan	--	17-Jan	22:36
2-Jan	23:06	18-Jan	20:25	2-Jan	5:57	18-Jan	23:14
3-Jan	20:23	19-Jan	19:23	3-Jan	4:26	19-Jan	7:14
4-Jan	18:39	20-Jan	1:42	4-Jan	21:33	20-Jan	9:21
5-Jan	19:11	21-Jan	20:14	5-Jan	8:45	21-Jan	9:05
6-Jan	22:37	22-Jan	19:48	6-Jan	10:31	22-Jan	9:00
7-Jan	20:36	23-Jan	20:24	7-Jan	8:43	23-Jan	9:16
8-Jan	19:49	24-Jan	20:32	8-Jan	8:01	24-Jan	6:01
9-Jan	19:37	25-Jan	19:58	9-Jan	7:21	25-Jan	22:54
10-Jan	18:52	26-Jan	17:59	10-Jan	1:18	26-Jan	9:33
11-Jan	19:35	27-Jan	22:15	11-Jan	21:19	27-Jan	7:24
12-Jan	18:10	28-Jan	21:30	12-Jan	12:06	28-Jan	10:15
13-Jan	20:47	29-Jan	20:04	13-Jan	6:07	29-Jan	6:14
14-Jan	20:03	30-Jan	19:15	14-Jan	6:05	30-Jan	8:40
15-Jan	20:19	31-Jan	16:35	15-Jan	7:45	31-Jan	2:36
16-Jan	20:48			16-Jan	7:40		

Red cells denote instances in which trains departed Rosebluff Yard more than 15 minutes into the next operating window

Mr. Meteer described this cycle as “the bubble.” The bubble is a result of many factors, all at play on a daily basis, affecting the workload of the various crews for both railroads at Rosebluff Yard and the Lead as a whole. Some of these issues are micro level, such as a customer erroneously releasing cars that must be returned (an occurrence which was observed by RLBA while onsite), while others are macro level issues, such as loading delays at a crude-oil terminal on the other side of the country. These factors would be a daily reality in any traditional single operator yard; during Mr. Sullivan’s time as a trainmaster, he dealt with them every day. With two railroads sharing and coordinating operations, the probability for a bubble to occur and to delay operations is greatly increased.

On a particular day, Mr. Ireland observed UP train YAK63 (the North Yard to Rosebluff Lead transfer) arrive into Rosebluff Yard so far into the KCS operating window, that RLC210, already well into its switching duties, had occupied all the tracks in the yard. RLC210 was not able to clear a route through the yard for YAK63 until after 9:00PM, three hours into the KCS operating window. As result, the Zone 1 cars delivered by YAK63 were not sorted by RLC210

until the next day, delaying delivery to customers and increasing the workload on both RLC210 (to sort two days of UP interchange cars) and RLC304 (to deliver two days of UP cars) the next day. To compound matters, the next day RLC210 experienced mechanical problems and did not arrive into Rosebluff Yard until nearly 8:00PM, two hours into the KCS window.

The delays that RLBA observed with YAK63 and RLC210 are representative examples of the bubble effect and the daily difficulty of operating in the Rosebluff Lead. KCS and UP operations on the Rosebluff Lead are completely interconnected. When the railroads experience compounding delays like those experienced with YAK63 and RLC210, service across the Lake Charles area must be adjusted to compensate. Both KCS and UP supervisors understand this reality and as such regularly adjust their daily operations to insure customers are getting the best service. A rigid, narrow fixed window of operation, such as what BNSF is suggesting, is simply not realistic in this environment.

Challenges to Operations in Lake Charles, LA Area Outside of the Rosebluff Lead

The above description of the joint operations in the Rosebluff Lead seeks to convey their complexity. Compounding that, operations on the Rosebluff Lead are only a subset of equally complex operations beyond the Rosebluff Lead that are necessary to integrate Rosebluff traffic with the rest of the KCS, UP and BNSF networks. Delays and disruptions which occur on the crowded Rosebluff Lead cascade beyond into the yards and operations which support Rosebluff traffic.

As was described earlier, the pair of KCS trains which service Rosebluff Lead customers are just two cogs in a larger system of coordinated freight movements. The same holds true for UP and its operations in the Rosebluff Lead. At each step of the process of transporting cars to and from customers along the Rosebluff Industrial Track, trains belonging to both KCS and UP

face operational constraints and possible delays that not only negatively impact direct service trains, but also the various interconnected trains handling traffic to and from Lake Charles. Much like forces outside of the Rosebluff Lead can significantly impact operations in the yard and industrial track, delays originating on the Rosebluff Lead can set off ripple effects across the entirety of both KCS and UP operations in the Lake Charles area.

For KCS, these ripples can directly affect traffic on the outbound MLCSH manifest train. RLC210 and RLC304 are just the first two crews of four required to ensure that the carloads produced by local customers depart the Lake Charles area in a timely fashion. The cars delivered by RLC304 from Rosebluff Yard must be sorted by the RLC301 yard switcher in Mossville, which attempts to have the outbound MLCSH constructed by Noon. If RLC304 is forced to continue working into the UP operating window and is late returning, the Mossville trainmaster has two options. The first is to keep RLC301 on duty to sort the cars coming from the late RLC304, potentially delaying the departure of MLCSH in the process. The second option is to store the late arriving cars at Mossville for the next day's MLCSH. Neither option is good; delaying the departure of MLCSH may result in missed connections at Shreveport. Additionally, RLC301 shares motive power with the second shift switcher, RLC102. Thus, keeping RLC301 on duty will delay RLC102 from beginning its work. Conversely, storing cars overnight in Mossville Yard consumes capacity and adds additional switching time at Mossville, an already difficult to switch, stub ended yard.

Like KCS, UP operations in the Lake Charles area are subject to ripples in service originating on the Rosebluff Lead. The UP trains responsible for transferring traffic to and from the Rosebluff Lead are inbound YAK63 and outbound YRB86. Like RLC210 and RLC304, these two trains have pick up and set out deadlines that affect a variety of other trains outside of

the Rosebluff Lead and Lake Charles area. Between the volumes and physical limitations in the Rosebluff Lead, it would be difficult enough for a single carrier to consistently make its connections. In the unique circumstances in the Rosebluff Lead, consistent service is not just dependent on KCS performance but it also directly depends on UP's performance.

Effects of BNSF Entry into the Rosebluff Lead

As we reviewed the observations from RLBA's onsite visit and the documentation provided by KCS, UP and BNSF, it became clear to us the Rosebluff Lead is a congested operation, currently operating at or near capacity. Rosebluff Yard is small with limited physical capacity, given its multiple roles of interchange, marshaling, industrial switching, and crew change location for two railroads. Equally complex is the switching agreement creating and governing the two switching zones and operating windows within Rosebluff Lead. The efforts put forth by KCS and UP to operate this busy, complicated stretch of railroad are extraordinary.

With that being said, these efforts, however commendable they may be, still have not produced a completely effective operation for the Rosebluff Lead. Mr. Meteer reports that Rosebluff Lead operations are as good as he has seen in his four and a half years as trainmaster at Mossville, but "the bubble" effect remains a frequent occurrence. Both UP and KCS still regularly overrun their respective operating windows in Rosebluff Yard. The unpredictable nature of railroading still significantly alters operations on a daily basis.

The inescapable limitations of Rosebluff Lead are never too far out of sight. Case in point, Rosebluff Lead customers are just two years removed from major service issues. Service reliability has since improved, but not without significant investments of time and resources.

[REDACTED]

[REDACTED]

Improving rail service to a large shipper like CITGO is not as simple as taking a back road to avoid a traffic jam on the interstate. What BNSF fails to consider is that even in the event that BNSF was granted access to the Rosebluff Lead, the new carrier would be limited to the same infrastructure and extenuating operational circumstances on the Rosebluff Industrial Track that currently impact UP and KCS. Mr. Scott believes that the existing operators could not add another regular daily train into the Rosebluff Lead without serious impacts to both railroads and to their customers. As Figure 4 demonstrates on the next page, it's already a difficult balancing act to get the various trains in the yard as it is under the current operations pattern.

Forcing more trains from another operator onto the Industrial Track would do nothing more than further degrading service reliability. The problem remains that a physical plant that is currently unsuitable for two carriers would now be forced to accommodate three. Not only would service to CITGO suffer, but service to all customers in both switching zones would suffer.

Figure 4 (UP-WLC-0000397)**Reaction to BNSF Material**

The counter to these legitimate concerns is obvious; BNSF states its *initial* entrance into the Rosebluff Lead will be via a nonstop unit oil train directly serving CITGO, with minimal interference on current operations. BNSF went so far as to generate several studies detailing preliminary plans about how direct service to CITGO would occur, all of which we have reviewed. These studies point to large capital investments made by BNSF in the region (but not on the Rosebluff Lead) and [perceived windows in Rosebluff Lead operations in which a BNSF unit oil train could transit the yard with allegedly minimal impact on KCS or UP] (BNSF-C-000595(R)) While perhaps these studies prove to be plausible findings for a theoretical study, they fail to account for the various realities and obstacles outlined in this statement.

In Mr. Bredenberg's statement for BNSF, he points to a \$26 million investment for a new yard in Lacassine, LA as a solution to service issues in the Rosebluff Lead. While Lacassine Yard may likely offer some minor capacity relief to Rosebluff Yard, it does nothing to relieve the more serious capacity and infrastructure issues in the Lake Charles area which directly impact service quality to the Rosebluff Lead. Lacassine Yard is 22.5 miles from Lake Charles. To reach the Rosebluff Lead, BNSF trains would have to transit the same single tracked Lafayette Subdivision UP currently does. The single track Lafayette Subdivision sees up to 30 trains a day from UP, BNSF and Amtrak. The mix of traffic on the line is diverse, ranging from general manifest to Amtrak's Sunset Limited. As is the industry standard, the existing UP local trains to the Rosebluff Lead, YAK63 and YRB86, are given the lowest priority on the Lafayette Subdivision.

Not only must these Rosebluff Lead transfers dodge higher priority trains, but they must also contend with infrastructure limitations. A particularly troublesome obstruction to operations on the Lafayette sub is the unavoidable Calcaseiu River Bridge, a single track swing bridge with low clearances and aging mechanical components prone to malfunctioning. The bridge opens approximately a dozen times a day across all hours of the day. While in the Lake Charles area, Mr. Ireland observed several examples of the complications caused by the Calcaseiu River Bridge and other Lafayette Subdivision operations; UP YRB86 was delayed at or near Rosebluff Yard three of four days due to operational or infrastructure constraints outside the Yard. UP already has a difficult enough time finding capacity for its own Rosebluff Lead locals. A BNSF local from Lacassine would only compound these issues, while adding minimal capacity savings in Rosebluff Yard [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (BNSF-C-000595(R)).

Photo 1

Photo of Typical Operations at Rosebluff Yard Taken From PPG Drive, 10FEB2015



Photo 1 notes: Image depicts UP YRB86 working in Rosebluff Yard during the UP operating window. The locomotives are occupying Track 4, while Tracks 1,2,3,5 (not visible, obstructed by the locomotive) and 6 are occupied by freight cars. Out of the picture, UP YRB65 is working the western end of the yard on Tracks 3,4,5 and 6. A clear path through the yard will not exist until the UP crew creates one before turning over operations of Rosebluff Yard to KCS.

BNSF fails to consider the operational issues that KCS and UP experience firsthand every day, which have been discussed at length in this statement. Operations in Rosebluff Lead are not stand alone. The plan will and does frequently change, so much so that the expectation that a unit train could operate unimpeded through a narrow, fixed window is unrealistic. Volumes and customer demand vary all the time and service is adjusted as necessary. Those adjustments are not easy and trivial to make, especially when occurring over a “right-sized” physical plant.

The negative impact of the proposed BNSF movement to CITGO is barely the tip of the iceberg. BNSF's application to the Board is requesting unrestricted access to all customers in the Rosebluff Lead. BNSF offers only limited estimations of traffic volumes, supported by a rough, untested and little-detailed operating plan. BNSF appears to have produced some theoretical plans as to how operations would be affected within the CITGO facility and elsewhere on the BNSF system outside of the Lake Charles, LA area, but it appears that little effort has been made by BNSF to produce information which would be necessary to assess the potential interference with existing UP and KCS operations on the Rosebluff Lead. In short, BNSF's testimony and additional documentation is silent as to the unseen portion of the iceberg, namely the impact of potentially operating numerous switching crews in the Rosebluff Lead area and likely wanting the ability to use Rosebluff Yard to sort cars for delivery on the Industrial Track. The majority of evidence submitted by BNSF refers to the CITGO situation, just a small part of the full level of potential activity and interference. If unit train operations to CITGO would cause so many additional difficulties for the existing carriers, one can only imagine the outcome if BNSF attempted to operate in Rosebluff Yard or run multiple trains on the Industrial Track.

Conclusion

As was stated in the opening remarks of this statement, RLBA was asked to consider the operational ramifications of the introduction of BNSF direct service into Rosebluff Lead as it pertains to the authority given to the Surface Transportation Board under Title 49, U.S. Code, Sect. 11102. The following portion of that authority is critical to answering that question;

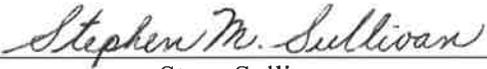
“The Board may require terminal facilities... to be used by another rail carrier if the Board finds the use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. “

KCS and UP's predecessors have jointly operated the Rosebluff Lead since 1948. Since that time, numerous amendments and adjustments have been agreed upon by the two railroads to improve operations in both Rosebluff Yard and the Industrial Track. As has been discussed in this statement, despite all this effort, the system remains a constant operations challenge that is imperfect at best. As a railroad professional with over 35 years of experience in the industry, Mr. Sullivan finds it impossible to believe that introducing a third carrier into a system which is already struggling to maintain consistent and effective service can do anything but seriously impair the ability of the existing carriers to handle their traffic and service their customers in the Rosebluff Lead.

Verification

I, Steve Sullivan, verify under penalty of perjury that I have prepared and read this Verified Statement to be filed on behalf of Kansas City Southern Railway in the aforementioned proceeding before the Surface Transportation Board, that I know the contents thereof, and that the same is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on August 21, 2015


Steve Sullivan

Verification

I, John Ireland, verify under penalty of perjury that I have prepared and read this Verified Statement to be filed on behalf of Kansas City Southern Railway in the aforementioned proceeding before the Surface Transportation Board, that I know the contents thereof, and that the same is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on August 21, 2015


John Ireland

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

REPLY OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

EXHIBIT C

VERIFIED STATEMENT OF RICHARD BARTOSKEWITZ

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED STATEMENT OF
RICHARD T. BARTOSKEWITZ, ASSISTANT VICE PRESIDENT,
SOUTHWEST DIVISION,
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

My name is Richard T. Bartoskewitz. I am Assistant Vice President for The Kansas City Southern Railway Company (KCS). I am responsible for operations on KCS' Southwest Division, which extends from Shreveport to Lake Charles, LA (including West Lake Charles and the Rosebluff Industrial Lead), and beyond to include Beaumont, Port Arthur, Houston, Corpus Christi, and Laredo, TX. My office is located at 1610 Woodstead Court, Suite 470, The Woodlands, TX 77380.

I am providing this statement to address the inadequacies and inaccuracies of the operating plan put forth by BNSF Railway Company (BNSF) in its December 31, 2014 filing in the above-captioned application. Based on my review of BNSF's operating testimony and my knowledge of operations on the Rosebluff Industrial Lead, I conclude that BNSF's proposed operation would substantially interfere with KCS' service to customers on the Rosebluff Lead, both those customers that KCS serves directly and those customers for which UP provides switching service to or from KCS. I believe that BNSF's proposal would likewise necessarily interfere substantially with UP's service on the Rosebluff Lead.

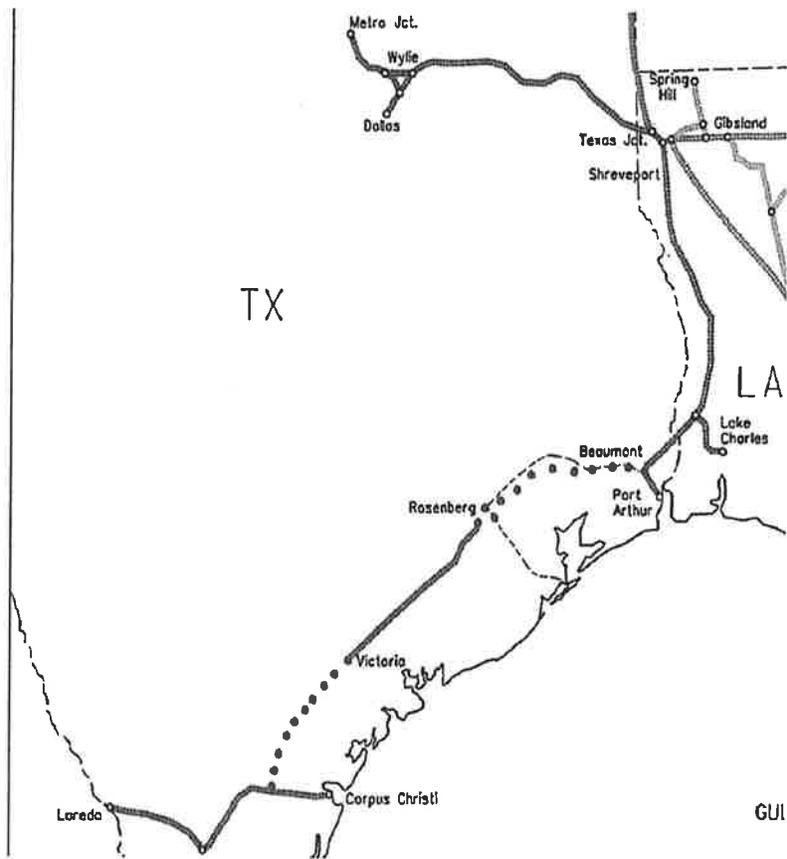
EXPERIENCE AND EDUCATIONAL BACKGROUND

I have worked in various operations management roles in the railroad industry for 17 years, including 15 years with BNSF Railway and two years with KCS. From 1997 through 2012, I held various positions with BNSF Railway, beginning as an analyst in line capacity studies and operations analysis in 1997. I was subsequently appointed manager of interline management in 1999. From 2002 through 2012 I progressed through leadership positions of increasing responsibility in field operations including terminal trainmaster in Houston, TX; division trainmaster in Silsbee/Beaumont, TX; terminal superintendent in Temple, TX; general director of transportation in Seattle, WA; and division general manager in Billings, MT. Much of my work for BNSF was in the Texas/Gulf Coast region.

In 2013, I joined KCS as Director of Field Transportation for KCS' Southwest Division based in The Woodlands, TX, and was subsequently promoted in early 2014 to my current position of Assistant Vice President, Southwest Division. I report directly to KCS' Vice President of Transportation and Safety, who reports to our Senior Vice President and Chief Transportation Officer.

RESPONSIBILITIES AS AVP, SOUTHWEST DIVISION FOR KCS

In my current assignment as Assistant Vice President of KCS' Southwest Division, I am accountable for leading and providing oversight for the daily operations of the division including safety, service to our customers, and financial performance. KCS's Southwest Division extends through western and southwest Louisiana, along the Texas Gulf Coast region, and south Texas, essentially all of KCS' lines and operations south of Shreveport, as shown in the map below.



The territory includes major terminals for KCS such as Lake Charles, Beaumont, Port Arthur, Kendleton, Corpus Christi, and Laredo, as well as KCS's operations via trackage rights and its own lines between Beaumont, Robstown / Corpus Christi, and Laredo, Texas.

BNSF 'OPERATING PLAN' IS BASED ON UNREALISTIC ASSUMPTIONS

BNSF's proposed operation is based upon assumptions regarding the availability of multiple clear operating windows or "operating slots" on the UP-BNSF main line, onto the Rosebluff Lead, through the Rosebluff Yard, and continuing on the Rosebluff Lead beyond the yard to CITGO's facility, all aligning in such a way so as to occur at more or less the same time, on a consistent and repeatable basis. Such windows or "slots" do not exist on the Rosebluff Lead nor in the Rosebluff Yard on a consistent and repeatable basis.

In preparing for this statement, I reviewed the Verified Statement of Rollin Bredenberg (Bredenberg V.S.), operating witness for BNSF. Mr. Bredenberg says BNSF's proposed service will "closely resemble" a proposal "which provided BNSF with a two-hour window ... during UP's 12-hour operating period." Such a "window," however, does not exist.

First, the "two-hour window" BNSF refers to - "between 5 a.m. and 7 a.m.," Bredenberg V.S., Exhibit F - is not "during UP's 12-hour operating period" but actually impedes upon and disrupts both UP's and KCS's operations. KCS' operating window in Rosebluff Yard begins at 6 p.m. and extends until 6 a.m. of the following day, halfway through the operating window BNSF seeks to claim for itself. BNSF misstates that its proposed operating "window" would be taken from UP, ignoring the fact that it would also carve time from KCS' defined 6 p.m. to 6 a.m. operating window, and thus implying that its proposed operation would have very little or perhaps no impact on KCS' operations. Any disruption of operations necessary to create such a window would necessarily disrupt the operations of both the KCS and UP in Rosebluff Yard.

Second, such a 5 a.m. to 7 a.m. "window" ordinarily does not exist in Rosebluff Yard; rather, KCS and UP operations would have to be disrupted to create such a window. Below are tables, prepared at my request, showing for two different periods - May 1 through June 15, 2014, and February 1 through February 17 of this year - when KCS' RLC304, our job that goes on duty just prior to midnight and is scheduled to depart the Rosebluff Lead by 6:00 a.m., actually departed the yard. While on the Rosebluff Lead, RLC304 switches in Rosebluff Yard and serves customers adjacent to Rosebluff Yard until departing Rosebluff with interchange destined to Mossville Yard. RLC304 left Rosebluff Yard at the following times on the listed dates:

May-June 2014	
Date	OUT
5/1/14	8:28
5/2/14	9:21
5/3/14	7:08
5/4/14	8:37
5/5/14	15:13
5/6/14	7:19
5/7/14	8:46
5/8/14	8:37
5/9/14	9:06
5/10/14	7:06
5/11/14	7:28
5/12/14	7:46
5/13/14	8:02
5/14/14	6:33
5/15/14	6:53
5/16/14	7:39
5/17/14	21:28
5/18/14	8:11
5/19/14	11:00
5/20/14	7:12
5/21/14	7:28
5/22/14	8:13
5/23/14	9:20
5/24/14	11:05
5/25/14	20:02
5/27/14	11:29
5/28/14	9:38
5/29/14	7:07
5/30/14	6:44
5/31/14	6:50
6/1/14	23:04
6/2/14	6:57
6/3/14	8:24
6/4/14	9:50
6/5/14	9:11
6/6/14	8:35
6/7/14	20:29
6/8/14	8:04
6/9/14	15:17
6/10/14	2:41
6/11/14	17:27

6/12/14	10:23
6/13/14	8:57
6/14/14	■
6/15/14	■

February 2015	
Date	OUT
2/1/15	■
2/2/15	7:50
2/3/15	9:39
2/4/15	9:10
2/5/15	8:07
2/6/15	7:53
2/7/15	■
2/8/15	■
2/9/15	8:14
2/10/15	8:38
2/11/15	■
2/12/15	8:04
2/13/15	■
2/14/15	■
2/15/15	20:53
2/16/15	10:00
2/17/15	8:17

As the tables above show, only on 19 days of the 44-day May-June 2014 measurement period, and on 6 days in the 17-day February 2015 measurement period, would our operation potentially have allowed a 5 a.m. to 7 a.m. "window" to be open. Thus, about 60-65% of the time, the "window" BNSF imagines for entering the Rosebluff Lead does not exist. In order to operate when that window does not exist, BNSF would have to interrupt KCS' operation in Rosebluff Yard, impacting our ability to serve customers and to conduct timely interchange with UP. That interruption would likely interfere with UP's Rosebluff Yard operations as well.

Furthermore, as is apparent from the tables above, the departure time of KCS' RLC304 job from Rosebluff Yard is irregular. Sometimes it is well within the target window for KCS to depart, and UP subsequently to occupy, the Rosebluff Yard. More often, however, it is not.

That is because the variables and constraints affecting KCS' and UP's operations on the Rosebluff Industrial Lead can and often do change considerably from day to day. Some of these variable and constraints are within KCS' influence or control, and as such they are actively managed to accomplish safe and timely service for our customers; however many are not within our immediate influence or control. Frequently, UP overstays its target time for occupying Rosebluff Yard, for reasons that may include but are not limited to: holding its train at Rosebluff Yard for an Amtrak train or other priority traffic to pass on the 50/50 Line, because the nearby Calcasieu River bridge is open to allow river vessel passage, because of an equipment or track problem, or often just because of the volume of cars being handled and processed exceeds the time allocated by plan for UP's operations in Rosebluff Yard. UP's late departure causes KCS to be late starting its next shift in the yard, and the problem of each carrier being outside of the planned operating windows in Rosebluff tends to perpetuate in a "vicious cycle" until either KCS and/or UP gain enough capacity and flexibility to catch up and reset the operations to a standard plan and schedule. Once the operation is off-plan, this restorative process frequently takes days to fully play out, and in the most extreme scenarios it can take weeks or even longer.

This essential flexibility would not be possible if UP and KCS had to adhere to rigid operating times in order to manufacture a window or operating slots for BNSF to provide a clear route to and from CITGO. That lack of flexibility would mean that KCS and UP would often have to leave work incomplete – just drop everything and get out of the way or "clear up" – to allow BNSF's trains to pass through. Even if that were possible – and sometimes it would not be possible – it would mean stopping service to shippers before the service was complete, and an increased probability of missed downstream connections that would degrade service to our customers and ultimately increase our customers' supply-chain costs.

Third, if BNSF's proposed operation would work as smoothly as it says, it would not need a "two-hour window" for entering the Rosebluff Lead. Mr. Bredenberg says that "The CITGO Direct Train will depart the Lacassine Yard and head west 20 miles along the 50/50 Line to the Rosebluff Industrial Lead...I expect that this operation would take 30 to 45 minutes *if BNSF had a clear route.*" Bredenberg V.S. at 7-8. Assuming very optimistically that it would take an additional 30 minutes to traverse the Rosebluff Lead to CITGO, that's a total 60 to 75 minute window needed to allow for the variability in BNSF's proposed transit from the Lacassine Yard to CITGO. Why then does BNSF seek a *two-hour* window?

BNSF seeks a two-hour window because it knows that it could not reliably reach the Rosebluff Lead and clear Rosebluff Yard in the 60 to 75 minute period it hypothesizes. Note that Mr. Bredenberg's time projections are both couched in terms of "*if BNSF had a clear route.*" BNSF does not show that it would have a clear route on the 50/50 Line (where it is one-half owner), a line which hosts up to 30 trains a day (including Amtrak) and which contains a swing bridge crossing of the Calcasieu River that must open multiple times per day whenever river vessels request passage. See Sullivan/Ireland verified statement. BNSF does not show that it would have a clear route in Rosebluff Yard either, as KCS and UP use all tracks in the yard for various switching and interchange operations. And BNSF does not show that it would have a clear route between Rosebluff Yard and CITGO, over which track UP has 24-hour around-the-clock operations.

In short, BNSF's projected plan of operations is clearly based on a wrong, or at best unproven, assumption that BNSF would have clear passage over 25 miles of main line and lead track, across a swing bridge which must open for river vessel traffic on an unpredictable and unplanned basis, and through a capacity-constrained industrial support yard that routinely

operates near or above its optimal operating inventory. Such an assumption, in my opinion, is not realistic. I believe that BNSF knows that it is not realistic or they would not have repeatedly said, "*if BNSF had a clear route.*" Indeed, I imagine that BNSF is hoping that the Board will approve its application so that BNSF can say to KCS and UP, 'The STB said that you have to create a clear route for BNSF.' Such an edict would, in my opinion, be disastrous to the already constrained and difficult operations through Rosebluff Yard and on the Rosebluff Lead.

BNSF's operating statement is also internally inconsistent, asserting that communication and coordination among railroads will allow the operation BNSF proposes to work smoothly while asserting that UP mishandles its own operation. Communication is not a magic wand, and coordination is time consuming and difficult. If communication and coordination were enough to fix the UP operating problems that BNSF complains of, those problems would already be fixed, since clearly UP is capable of communicating and coordinating with itself. Adding yet another set of people to talk to and another set of trains to consume the limited supply of track space and time is not going to make communication or coordination easier. While BNSF implies that more communications will somehow magically improve operations, if that were the case UP could already have improved the problems that BNSF complains about.

BNSF OPERATION ON THE ROSEBLUFF LEAD WOULD IMPAIR KCS SERVICE TO ITS CUSTOMERS

BNSF operations through Rosebluff Yard and on the Rosebluff Lead to provide direct service to CITGO (or any other customer) would add congestion and more operating problems to an already-congested service area. BNSF's evidence fails to establish that its proposed operation will not substantially impair KCS' and UP's abilities to serve customers in this crowded operating environment.

As I understand it, to prevail in its application, the applicable statute requires BNSF to show that its proposed operation will not "substantially impair[] the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business." BNSF's application, seeking direct access to perhaps a dozen or more shippers for thousands of carloads of traffic, covers barely two pages, containing no details and no firm commitment of any sort.

First, the statement offers no detail of the proposed operation. Instead, BNSF opts for a vague and cursory description in hopes that the STB will grant the application so that BNSF can then demand that UP and KCS get out of BNSF's way whenever it wants to serve a customer. I understand that this is much the way that BNSF acted in December 2012, when it demanded that KCS allow it to deliver a unit train of crude oil to CITGO, even though CITGO's facility did not have the capacity to receive the train.

Second, several portions of BNSF's description of its proposed operation are particularly troubling, namely:

- "... and to other customers in the terminal area." Bredenberg V.S. at 7. BNSF offers no description *at all* of service to any customer other than CITGO. Each customer's facility is different – BNSF's proposal to chamber a train inside the CITGO facility, even if feasible there, would not be possible with customers with more limited or different track layouts. BNSF offers no hypothetical transit time nor commodity description for service to other customers, some of whom receive or ship TIH materials. TIH shipments cannot dwell in a carrier's yard for more than 48 hours, meaning that if BNSF were to handle traffic for a shipper receiving TIH loads, it would have less flexibility to hold those loads to wait for KCS and UP to create an operating window.

- “will closely resemble” the operation outlined in UP’s December 18, 2012 e-mail. Bredenberg V.S. at 7. BNSF’s description “closely resemble” conspicuously avoids any sort of actual commitment to how it would conduct its proposed operation. To the extent that the brief description can be deciphered, it is only for trains moving point to point, without stopping and without switching, via a dedicated operating period when all other business gets out of that train’s way. Indeed, the operation described on page 7 does not track the description in the described UP e-mail, so exactly what BNSF proposes is unclear.

What’s missing from BNSF’s description is also a red flag – how much traffic BNSF proposes to handle. Again, BNSF provides no description at all of any planned service to any customer except to CITGO, yet it asks – or at least appears to ask – for access to all customers on the Rosebluff Lead in the same manner. BNSF wants UP and KCS to create a two-hour window, clearing at least 25 miles of track, for BNSF to enter the CITGO facility, and a similar window for BNSF to exit the facility. As shown above, those windows are imaginary – they do not exist today. How many windows per week is BNSF seeking to force UP and KCS to create just so BNSF can serve CITGO? And how many other such windows will BNSF seek to serve other unspecified shippers? Since BNSF describes only a direct train service – saying its “direct service to the CITGO facility *and to other customers in the terminal area*” will “closely resemble” the so-called “CITGO Direct Train” - BNSF has to contemplate a separate train for each shipper, to avoid occupying the Rosebluff Lead with switching cars and further interfering with service to shippers on the track. BNSF’s evidence offers nothing at all about how many such trains and how many operating windows KCS and UP would be required to disrupt their

operations to create. Without such information, it is impossible to fully quantify the extent of the interference BNSF's proposal would cause.

In essence, BNSF's service proposal is asking the STB to force UP and KCS to interrupt their already constrained operations on the Rosebluff Lead to make operating windows for BNSF. Not only does BNSF want two, two-hour operating windows to serve just one shipper - CITGO - but it also wants the STB to tell KCS and UP that they need to create two-hour windows for direct train service to any of the many other shippers that are on the Rosebluff Lead. Such an ability to demand direct access would severely interrupt KCS service. I would expect it would be at least equally disruptive to UP, which operates a larger segment of the Rosebluff Lead as well as operating in the Rosebluff Yard.

VERIFICATION

I, Richard T. Bartoskewitz, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing verified statement.

Executed on this 22nd day of August 2015 at The Woodlands, Texas.


Richard T. Bartoskewitz
AVP, Southwest Division
The Kansas City Southern Railway Company

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

REPLY OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

EXHIBIT D

VERIFIED STATEMENT OF JIMMY WAYNE SCOTT

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

**VERIFIED STATEMENT OF
JIMMY WAYNE SCOTT, SENIOR TRAINMASTER,
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

My name is Jimmy Wayne Scott. I am Senior Trainmaster for The Kansas City Southern Railway Company (KCS). My office is located at KCS' Mossville Yard, 3601 Old Spanish Trail, Westlake, LA.

The purpose of this statement is to address the substantial operational problems that the proposed operation of BNSF Railway Company (BNSF) on the Rosebluff Industrial Lead, as described in the Verified Statement of BNSF witness Rollin Bredenberg (Bredenberg V.S.) would cause KCS in serving its customers on the Rosebluff Lead and elsewhere.

EXPERIENCE

I have been involved with railroad operations for 22 years, all with KCS, mostly in the Lake Charles area. I hired on with KCS in 1992 as a conductor. I was promoted from conductor to engineer in October 1994. For about 12 of the next 16 years when I worked as an engineer, I was stationed in the Lake Charles area. For a very brief portion of that time, I even worked in Zone 2 of the KCS-UP joint facility, a zone which since 1998 has been switched exclusively by UP. Zone 2 is where CITGO, the target of BNSF's application, is located.

In 2010, I entered management as a road foreman of engines. My responsibilities in that position primarily involved overseeing rules compliance by train crews. My oversight activities included performing at least 10 check rides per month with train crews, downloading and reviewing event recorder data, checking train speeds with a radar gun, and being in charge of rules training classes.

In 2013, I became Terminal Trainmaster for Mossville and Rosebluff Yards. In that position, I continued to have some responsibilities for operating rules compliance, but also acquired responsibilities for interfacing with KCS' customers, understanding their service needs and working to make our service match those needs.

Beginning in 2014, I became a Senior Trainmaster. While I am in the field a good bit, my office is at KCS' Mossville Yard, KCS' main yard serving the Lake Charles area, where KCS crews serving Rosebluff Yard go on and off duty and where cars destined to or from Rosebluff Yard and the shipper facilities in that portion of Zone 1 are switched. My territorial responsibilities now stretch from the Lake Charles area to DeQuincy and all the way to Shreveport. I continue to interface with customers about their service needs and our performance to meet those needs, as well as having continued supervisory responsibilities for train operations. In total, there are 13 engineers and 28 conductor/brakemen (including extra boards) providing local service in the Lake Charles area under my supervision.

OVERVIEW OF OPERATIONS ON THE ROSEBLUFF LEAD¹

BNSF seeks access in this proceeding to operate trains on the Rosebluff Lead. The Rosebluff Lead consists of track jointly owned by KCS and UP, extending south from a jointly-owned UP-BNSF main line, serving a number of industries.

Under a 1981 agreement between KCS and SP (Exhibit 3 hereto), KCS is responsible for

¹ See maps of the Rosebluff Lead, attached as Exhibits 1 and 2.

serving customers located on the northern portion of the Rosebluff Lead (generally, the trackage pictured as the black lines on Exhibit 1). That segment, along with certain primarily KCS-owned track north of the UP-BNSF main line, comprises Zone 1 of the KCS-UP joint facility.

Meanwhile, UP serves Zone 2 of the joint facility (generally, the trackage pictured as the black lines on Exhibit 2) south of Bayou D'Inde, which is the dividing line between Zone 1 and Zone 2.

The agreement designates Rosebluff Yard as part of both Zones 1 and 2. Both UP and KCS having the right to use all tracks, and to store cars on certain tracks as agreed between them:

“Rose Bluff Yard shall be considered common to both zones, and all trackage therein may be used by either carrier...For operating efficiency, certain trackage in said yard shall, by agreement between the General Managers of the parties...be designated for the primary use of one party or the other, but [KCS] shall not use the designated [UP] tracks for storage purposes, nor shall [UP] use the designated [KCS] tracks for storage purposes.”²

Under the 1981 agreement, KCS and UP provide reciprocal switching for each other to customers in the zone that they serve. In addition, KCS and UP each have the right to deliver “trains of 25 cars or more loaded with the same commodity on one bill of lading on the same day” to an industry in the zone switched by the other carrier. Exhibit 3, page #5.

Every other year between 1981 and 1999, UP's predecessors and KCS swapped which zone they switched. See Exhibit 3, first page (UP letter). However, because of shippers' service concerns, KCS and UP agreed to suspend alternating which carrier served which zone, to provide more consistent customer service. Since that time, KCS has switched Zone 1 and UP has switched Zone 2.

² Cars are held by KCS in Rosebluff Yard for customers in Rosebluff (Axiall, PPG, Tetra, Certainteed and BW Services). Keeping these cars in proximity to the customers that need them allows KCS to provide better, more responsive service to customer needs.

Something that is important to note about operations on the entire Rosebluff Lead is that operations are required to be conducted pursuant to General Code of Operating Rules Rule 6.28.³ The maximum operating speed allowed on the Rosebluff Lead is 10 miles per hour. But GCOR Rule 6.28 requires that a crew be able to stop the train it is operating within one-half the distance that the crew can see. So, at night, when visibility is more limited, speeds are slower. When it is rainy or foggy (which happens often here next to Lake Charles and the Calcasieu River), speeds are slower. And the bigger and heavier the train, the slower it must be operated to meet the requirement of being able to stop within one-half the distance that the crew can see. It is not uncommon, therefore, for operations to be conducted at 2 or 3 miles per hour, particularly at night or in bad weather.

I understand that BNSF projects transiting an approximately 5 mile distance from the 50/50 Line to the CITGO plant, in 25 minutes – 12 miles per hour. That is a higher speed than normal for operating on the Rosebluff Lead and may not be achievable considering the left and right turns of the track coming off the 50/50 Line, the right turn to enter the CITGO facility, and issues affecting the application of Rule 6.28, such as dark, weather, and the weight of the trains BNSF proposes to operate.

KCS OPERATIONS ON THE ROSEBLUFF LEAD

KCS operates 2 jobs on the Rosebluff Lead, serving customers, performing switching, and delivering and retrieving cars being interchanged with UP. These jobs, though scheduled,

³ Rule 6.28 reads, in pertinent part, “Movement on Other than Main Track. Except When moving on a main track or on a track where a block signal system is in effect, trains or engines must move at a speed that allows them to stop within half the range of visions short of:

- Train.
- Engine.
- Railroad car.
- Men or equipment fouling the track
- Stop signal. Or
- Derail or switch lined improperly.

frequently must adjust what time they operate, due to a variety of circumstances and the busy, crowded operating environment that is Rosebluff Yard and Zone 2 on the Rosebluff Lead.

Rosebluff Yard is a six track yard extending in a southwesterly direction from a connection to the UP-BNSF 50/50 Line and the KCS crossover of that line. The tracks are numbered 1 through 6 starting on the east side of the yard (the side nearest to the Calcasieu River). Each of these tracks is approximately a mile long. In addition, there are storage tracks near the southwest end of the yard. A copy of KCS' Spot Location and Inventory Control (SLIC) book maps covering Rosebluff Yard is attached as Exhibit 4. A copy of those maps, arranged together with the SLIC book map showing the trackage in customer facilities adjacent to Track 1 in Rosebluff Yard, is attached as Exhibit 5.

Rosebluff Yard is designated by the 1981 operating agreement as the principal interchange between UP and KCS in the Lake Charles area, but to be used only for interchange of cars originating or terminating in Zone 1 or 2. KCS and UP have agreed to divide the operating time in Rosebluff Yard equally, consistent with their equal ownership of the facility and the 1981 switching agreement. KCS' planned operating period is from 1800 hours to 0600 hours (that is, overnight, 6 p.m. to 6 a.m.).

During its planned period of operations from 1800 hours to 0600 hours, KCS operates two jobs - the RLC210 and the RLC304. Ordinarily the trains operating in Rosebluff Yard have three-person crews, so that there can be a conductor/brakeman on the ground on each end of the train to throw switches and perform other functions necessary to facilitate moving cars and locomotives among the six Rosebluff Yard tracks and the adjoining customers and storage tracks. Commonly, the KCS crews will use most or all of the tracks in Rosebluff Yard during a shift in the course of dropping off and picking up interchange, switching cars and serving

customers accessed off the tracks on the eastern side of the yard.

RLC210 is a seven-day-per-week job. The crew of the RLC210 is scheduled to come on duty at Mossville Yard at 1700 hours, in anticipation of departing for Rosebluff Yard to start working there at 1800 hours. However, RLC210 must hold in Mossville Yard until the last UP job working the west end of Rosebluff Yard departs to Zone 2 to continue serving industries in Zone 2. Between Mossville Yard and Rosebluff Yard, KCS' line crosses public and private roadways, passes through a multi-gated customer facility, and crosses the UP-BNSF 50/50 Line, so RLC210 holds at Mossville until cleared into Rosebluff to avoid blocking any of those facilities or interfering with KCS' 2 jobs serving customers north of the UP-BNSF 50/50 Line.

The last UP job working the west end of Rosebluff Yard makes sure that Track 4 is clear so that there is a place for RLC210 to enter Rosebluff Yard and clear the UP-BNSF 50/50 Line. RLC210 will pull into Track 4 in Rosebluff Yard and switch the cars in Tracks 1, 2 and 3 as well as set out the UP Cars to Track 5 or 6. This job will also work Certainteed, which breaks off of Track 1, and BW Services which breaks off #3 Storage Track at the southwest end of the yard. RLC210 also sets PPG Cars and Axiall Cars in Track 1 for the RLC304 job upon completion of RLC210's tour of duty. On Saturdays, when RLC304 does not operate, RLC210 will also work the Axiall A and B plants and the PPG C plant.

Job RLC304 comes on duty at Mossville at 2359, to be taxied over to Rosebluff Yard and to use the same locomotives as RLC210 to switch additional customer facilities and to bring cars received in interchange from UP at Rosebluff Yard on the return move to Mossville Yard. RLC304 will pull Axiall A plant cars and shove them into Track 4. They will then get cars out of Track 1 and work Axiall A Plant, Axiall B Plant, Tetra and the PPG C Plant. Once complete, they double their cars over from Track 1 to Track 4 and go to Mossville, leaving Tracks 1 and 4

clear.

While I am more familiar with KCS' operations in Rosebluff Yard than with UP's, I am acquainted with the parts of UP's activities that immediately precede or follow the operations of RLC210 and RLC304. After RLC304 departs Rosebluff Yard, a UP train switches on the southwest end of Rosebluff, mainly using Tracks 4, 5 and 6 though they have access to all six tracks. UP also has a train that arrives in the morning, pulls into Track 1 and usually doesn't leave until around 1500 hours, going eastbound across the Calcasieu River towards UP's Lake Charles yard. After that train leaves Rosebluff Yard, another UP train enters Rosebluff Yard from the southwest end, pulls into Track 1 and leaves anywhere from 15 to 60 cars in Track 1. When the UP is complete in Rosebluff, Track 4 is usually the only clear track left, waiting for arrival of RLC210.

**SCHEDULE INCONSISTENCIES AND DELAYS
IN ACCESSING ROSEBLUFF YARD**

Even though UP and KCS have agreed that KCS' period for operating in Rosebluff Yard is to begin at 1800 hours, RLC210 is normally delayed in departing for Rosebluff by UP delays in exiting Rosebluff. Below is a chart showing when RLC210 entered Rosebluff Yard during the first half of this February. As you can see, more often than not, RLC210 was delayed over an hour in accessing Rosebluff Yard, often as much as several hours.

Date	IN
2/1/15	17:48
2/2/15	18:55
2/3/15	21:06
2/4/15	0:09
2/5/15	21:26

2/6/15	21:21
2/7/15	22:12
2/8/15	18:23
2/9/15	18:53
2/10/15	19:05
2/11/15	18:55
2/12/15	21:00

2/13/15	18:33
2/14/15	19:44
2/15/15	18:10
2/16/15	20:25
2/17/15	19:15

A similar study for May to mid-June of 2014 showed that KCS is normally delayed more than an hour, and often several hours, past its 1800 hours start time for beginning work in Rosebluff

Yard:

Date	IN
5/1/14	19:38
5/2/14	21:57
5/3/14	20:22
5/4/14	21:17
5/5/14	21:27
5/6/14	19:34
5/7/14	22:10
5/8/14	22:33
5/9/14	22:52
5/10/14	20:46
5/11/14	20:57
5/12/14	18:15
5/13/14	18:09
5/14/14	18:20
5/15/14	23:22
5/16/14	23:59

5/17/14	18:33
5/18/14	19:41
5/19/14	20:49
5/20/14	18:43
5/21/14	18:34
5/22/14	23:59
5/23/14	22:50
5/24/14	2:20
5/25/14	17:57
5/26/14	holiday
5/27/14	20:43
5/28/14	21:58
5/29/14	21:00
5/30/14	20:42
5/31/14	21:05

6/1/14	19:11
6/2/14	18:08
6/3/14	17:58
6/4/14	17:58
6/5/14	22:42
6/6/14	19:47
6/7/14	17:46
6/8/14	18:09
6/9/14	18:48
6/10/14	17:52
6/11/14	22:49
6/12/14	2:28
6/13/14	19:33
6/14/14	17:40
6/15/14	22:36

When RLC210 is delayed in accessing Rosebluff Yard, the service it provides to customers it serves - Certainteed and BW Services (and Axiall A and B and PPG C on Saturday) - is delayed, as is RLC210's switching of the cars interchanged by UP to be spotted by RLC304. Therefore, the RLC304 crew is delayed in beginning its shift serving the Axiall, Tetra and PPG plants and in returning to Mossville with cars destined to the portion of Zone 1 north of the 50/50 Line or outbound from the Lake Charles area.

While from the KCS perspective delays in KCS accessing Rosebluff Yard appear to be due to UP, that does not necessarily mean that UP is doing something wrong in its operations. Many things can cause operating delays, from track structure problems to equipment breakdowns, surges in traffic, requests from shippers for more switching than normal, cars having been unloaded in a different order than they were delivered so additional switching is required, a locked gate at a plant or just heavier than normal traffic volumes. And there are problems outside the Rosebluff Lead itself, such as UP having to hold off the 50/50 Line on its way back to its Lake Charles yard due to a scheduled Amtrak train or the periodic opening of the bridge over the Calcasieu River. And time needed for regular track maintenance also impacts track time available to serve shippers.

Indeed, KCS experiences these types of problems, too. If we have a track problem (for example, if a switch point at a customer location breaks, as happened earlier this year), it will probably take a couple of hours for track maintenance personnel to get it fixed. Similarly, equipment breakdowns occasionally happen despite everyone's best efforts. These types of occurrences can delay or prevent service to a particular customer or track, or may affect operations more broadly.

These types of problems are common in railroading, but in a joint facility like the Rosebluff Lead, something that adversely impacts one carrier's operation will impact the other carrier as well, throwing the whole planned operating schedule off for both carriers. As shown above, operations on the Rosebluff Lead are commonly off schedule. When that occurs, it usually takes both parties several days to get operations back onto the agreed schedule.

Because operations on the Rosebluff Lead are often off schedule, the type of operation proposed by BNSF – where BNSF would have a two-hour window where no other operations could occur – simply cannot happen without significantly harming KCS' (and probably UP's) ability to serve their customers.

The operating window BNSF desires doesn't exist. As shown by Mr. Bartoskewitz's statement, more than half the time that BNSF wants set aside for its exclusive use, KCS is still operating in Rosebluff Yard. If KCS had to create a window for BNSF on a regular basis, KCS would have to terminate service to Axiall, Tetra or PPG before completing the services they wanted that day. And RLC304 would have to allow an extra margin of time – time it couldn't serve customers – to be certain that it was out of Rosebluff Yard and across the 50/50 Line before the BNSF-demanded window was set to begin.

The type of rigid scheduling BNSF proposes isn't compatible with the busy, constrained operating environment on the Rosebluff Lead. Expanding Rosebluff Yard doesn't appear possible with roads on each side and several highway overpasses stretching across it. KCS and UP already have to be very flexible with each other, adjusting start and stop times on a daily basis. Taking away that flexibility by creating a fixed operating window for a third carrier – or any other means of dividing track time on the Rosebluff Lead into three pieces rather than just

two - would further interfere with KCS and UP service to customers, service which BNSF alleges is already bad.

It is my opinion, based on many years' operating and supervisory experience with the Rosebluff Lead, that what BNSF proposes cannot be done without creating significant problems for KCS' (and probably UP's) ability to serve customers.

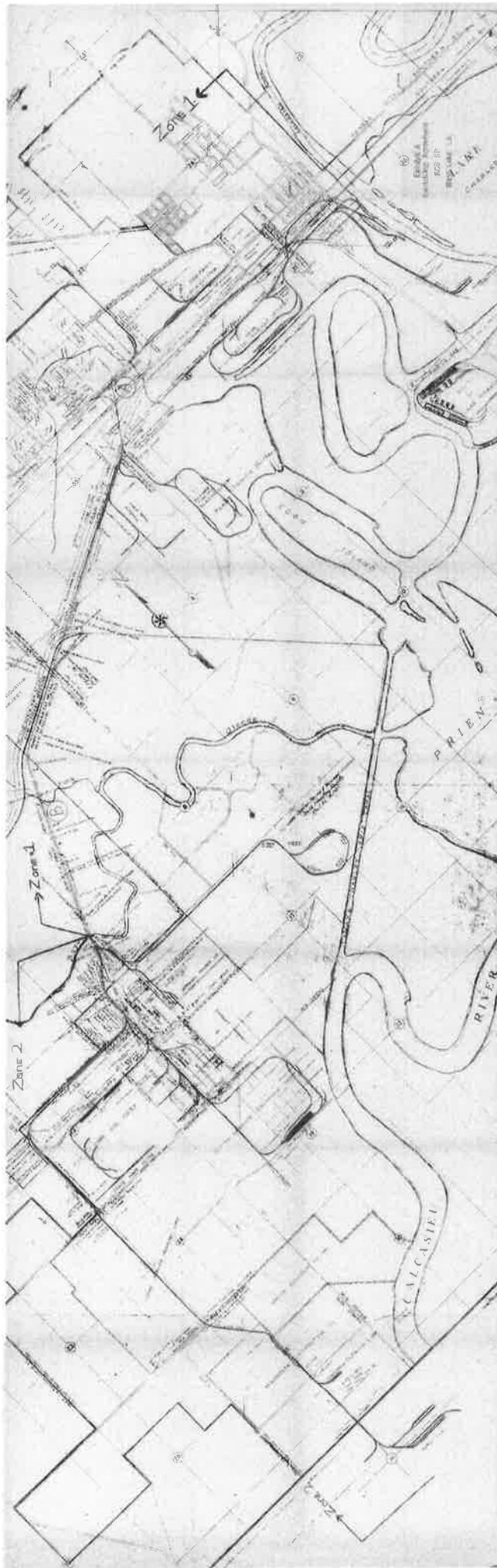
Rosebluff Lead, Zone 1 and Rosebluff Yard



Rosebluff Lead, Zone 2



1981 KCS-SP AGREEMENT FOR ZONE SWITCHING;
1999 LETTER AGREEMENT TO DISCONTINUE BIENNIAL ZONE SWAP



UNION PACIFIC RAILROAD COMPANY

OPERATING DEPARTMENT



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January 13, 1999

Mr. T. J. Nelson
Senior Assistant Vice President -
Contracts and Industrial Development
The Kansas City Southern Railway Company
114 11th Street
Kansas City, Missouri 64105

Dear Tom:

Reference is made to our telephone conversation of January 8, 1999 and past discussions between representatives of our respective companies concerning the switching of Zones 1 and 2 in the Lake Charles, Louisiana area.

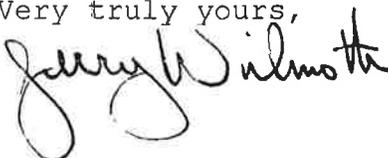
Agreement dated September 2, 1981, ("Agreement") between The Kansas City Southern Railway Company and Union Pacific Railroad Company, as successor in interest to Southern Pacific Transportation Company, covers the switching of the industrial area at West Lake - Lockmoor, Louisiana and divides this area in 2 switching zones, referred to as Zone 1 and Zone 2. Article I, Section D of the Agreement provides that SP will switch Zone 1 and KCS will switch Zone 2 for an initial 2 year period beginning March 1, 1981. Thereafter, upon written notice by either party to the other, either party may request a reversal of the zones to be switched. Notwithstanding the foregoing, past practice has been for the parties to reverse zones automatically every 2 years, effective March 1 of the appropriate year.

In response to concerns raised by various shippers located in Zones 1 and 2, KCS and UP agree that this reversal of switching for Zones 1 and 2 shall be suspended. Therefore, effective March 1, 1999, KCS will continue to switch Zone 1 and UP will continue to switch Zone 2.

Nothing contained in this letter agreement shall modify any of the terms or provisions of the Agreement, except to the extent provided for herein.

This letter is prepared in duplicate. Please acknowledge KCS' consent to the foregoing by signing this letter in the space provided below and returning one original to me for UP's records.

Very truly yours,



ACKNOWLEDGED AND AGREED
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By: J. P. [Signature]
Title: 1-27-99
Date: SR. V.P.O.

9/2/81

THIS AGREEMENT, made and entered into by and between THE KANSAS CITY SOUTHERN RAILWAY COMPANY, hereinafter sometimes called "Kansas Company", and SOUTHERN PACIFIC TRANSPORTATION COMPANY, hereinafter sometimes called "Southern Company",

WITNESSETH:

WHEREAS, under and by virtue of that certain agreement, dated September 19, 1934, among The Kansas City, Shreveport and Gulf Railway Company, owning company, and The Kansas City Southern Railway Company, operating company, and Texas and New Orleans Railroad Company, predecessor in interest to Southern Company, certain tracks of Kansas Company are used jointly by the parties hereto in the performance of railroad service to the plant of The Mathieson Alkali Works, Inc. and to other industries south of the Kansas Company's main track in the vicinity of West Lake, Calcasieu Parish, Louisiana;

WHEREAS, under and by virtue of that certain agreement, dated August 30, 1940, by and between The Kansas City Southern Railway Company and the said Texas and New Orleans Railroad Company, a portion of Kansas Company's main track and certain tracks connecting therewith are used jointly by the parties hereto in the performance of railroad service to the plant of The Continental Oil Company north of Kansas Company's main track in the vicinity of West Lake, Calcasieu Parish, Louisiana and, by supplemental agreements, dated May 5, 1951 and March 27, 1981, joint service was extended to the Continental Oil Black Company and to the linear alkylbenzene plant;

WHEREAS, under date of May 21, 1947, the United States and Reconstruction Finance Corporation deeded to The Kansas City Southern

Railway Company and the said Texas and New Orleans Railroad Company approximately 4.788 miles of industrial lead track and 1.635 miles of other tracks, together with right of way in Calcasieu Parish, Louisiana south of Southern Company's main track in the vicinity of Lockmoor, Calcasieu Parish, Louisiana and, under date of March 29, 1948, said railway companies entered into an agreement providing for the performance of railroad service on said trackage and other trackage which might be constructed by said parties;

WHEREAS, under and by virtue of that certain agreement, dated July 26, 1955, by and between the said Texas and New Orleans Railroad Company and The Kansas City Southern Railway Company provision was made for the performance of railroad service on certain jointly-owned trackage on the west side of the Calcasieu River at Westlake, Louisiana and, also, on certain trackage owned by Lake Charles Harbor and Terminal District; and

WHEREAS, the parties hereto now desire, in the interest of the more efficient performance of railroad service in the territory covered by the aforesaid agreements, to change the method of performing switching service and maintenance from the ways in which it is provided to be performed in said agreements, and to amend said agreements in certain other respects,

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I

A. Effective March 1, 1981, the industrial area West Lake-Lockmoor, Calcasieu Parish, Louisiana shall be divided into Zones 1 and 2 with the dividing point between zones being that point at

2.

which the jointly-owned track acquired by deed of May 21, 1947 crosses Bayou D'Inde west of State Highway No. 108 and west of Rose Bluff Yard, all as shown on the map attached as Exhibit A hereto. Zone 1 shall be that area east of Bayou D'Inde (except for Rose Bluff Yard), including industries both north and south of the Kansas Company main track service to which is provided for in the said agreements of September 19, 1934, August 30, 1940 and July 26, 1955 and, in part, in the said agreement of March 29, 1948. Trackage (including industry trackage) in Zone 1 is shown in green on Exhibit A. Zone 2 shall be that area west of Bayou D'Inde including industries service to which is provided for in the said agreement of March 29, 1948. Trackage (including industry trackage) in Zone 2 is shown in red on Exhibit A.

B. Rose Bluff Yard shall be considered common to both zones, and all trackage therein may be used by either carrier, with the understanding, however, that such use shall be limited to the handling of cars destined to or originating in either Zone 1 or Zone 2. For operating efficiency, certain trackage in said yard shall, by agreement between the General Managers of the parties, or their authorized representatives, be designated for the primary use of one party or the other, but Kansas Company shall not use the designated Southern Company tracks for storage purposes, nor shall Southern Company use the designated Kansas Company tracks for storage purposes. Except for the exchange of cars destined to or from the Continental complex and for the exchange of cars destined to or from the Mathieson plant, both in Zone 1, the exchange between the carriers of all cars destined to or from either Zone 1 or Zone 2 shall be made

in Rose Bluff Yard. Cars to and from the Continental complex shall be exchanged at the Continental yard, and cars to and from the Mathieson plant shall be exchanged at the Mathieson yard.

C. Notwithstanding the provisions of Section 9 of Article I of the said agreement of September 19, 1934; of Section 10 of the said agreement of August 30, 1940; of Section 10 of the said agreement of March 29, 1948, and of Section THIRD:(a) of the said agreement of July 26, 1955, Southern Company shall switch Zone 1 and Kansas Company shall switch Zone 2; provided that, at any time after the expiration of two (2) years from the effective date of this agreement, either party may, after giving notice in writing, on or before January 1 of any second year after the effective date hereof, cause a reversal of the zones to be switched, as hereinabove described, after which Kansas Company shall switch Zone 1 and Southern Company shall switch Zone 2 until they shall agree otherwise in accordance with the same procedure. It is the intent of this agreement that the performance of switching within the territory described hereinabove shall be divided between the parties as equitably as possible consistent with efficiency; therefore, modification of zones shall be accomplished only as the result of a study of operations conducted jointly by the parties.

D. New or expanded industries which may locate in the West Lake-Lockmoor industrial area subsequent to the effective date of this agreement shall be assigned to the zone in which situated geographically, except that, in the event of construction of new trackage in which the industry switch is located inside one zone, but the trackage extends into the other zone, such industry shall

be served by the carrier serving the zone in which said switch is located.

E. It is understood that either party hereto may handle solid over-the-road unit trains (here defined, for all purposes of this agreement, as trains of 25 cars or more loaded with the same commodity on one bill of lading on the same day) to an industry located in the zone other than that in which it performs switching service. In the event of derailment or other accident involving any such unit train, wreckage shall be cleared by and at the sole expense of the party operating said train, except in emergencies, when wreckage may be cleared by the other party at the sole expense of the party operating said train.

F. Except as provided herein and in paragraph E hereinabove, work, wreck or construction service shall be performed by the party switching the zone in which said service is to be performed; provided, however, in the event of derailment in the vicinity of Rose Bluff Yard, between Points A and B described in Article II A hereinafter, clearing and rerailling shall be performed by the party handling the train or cars derailed, except in emergencies (herein defined as interruption to service due to wreck, fire, storm, flood, explosion or other occurrence beyond the control of either party requiring immediate action to protect people or property), when it may be performed by the other party and the costs thereof shall be borne as provided in the liability provisions of the pertinent agreement. Track damage shall be repaired by the company maintaining said track.

ARTICLE II

A. Notwithstanding the provisions of Section 4 of the said

5.

agreement of March 29, 1948 (as supplemented by letter of September 24, 1969), the responsibility for maintenance, repair and renewal of all railroad-owned facilities (except the yard office-locker room), including signalling and crossing protection, extending from point of connection to Southern Company's trackage at Point "A" on Exhibit A to the south end of Zone 2 shall be divided at the south end of the bridge over Maple Fork, shown as Point "B" on Exhibit A. The company performing switching in Zone 1 pursuant to Article I hereof shall be responsible for maintenance between Point A and Point B, and the company performing switching in Zone 2 shall be responsible for maintenance of the remainder of the trackage covered by said agreement. Should the maintaining company fail to repair any defect in the jointly-used trackage within a reasonable time after the other company shall have notified it in writing, specifying the defect, and requesting that it be repaired, then said other company shall have the right to make the necessary repairs at once, and may do so, and the cost thereof shall be borne as provided in Paragraph B hereof.

B. Kansas Company shall continue to maintain, repair and renew its trackage covered by the said agreements of September 19, 1934, and August 30, 1940, and Southern Company shall continue to maintain the jointly-owned trackage covered by the said agreement of July 27, 1955, as amended by Letter Exchange of the Chief Engineers of the parties. The cost of maintenance, repair and renewal of all jointly-used trackage covered by said agreements shall be borne by the parties as provided therein. The cost of maintenance, repair and renewal of the trackage described in Paragraph A hereinabove

shall be borne by the parties in such proportions as the number of loaded cars handled for the account of each party, on each segment of trackage monthly, bears to the total number of loaded cars handled on said trackage during said month. In rendering bills for maintenance, each party shall apply Circular GMA No. 2710-D, "Rules Covering Preparation of Joint Facility And Other Bills between Carriers," revised July 1, 1980, of the General Managers' Association of Chicago, or any agency successor thereto, supplements and amendments thereto, and reissue thereof. Rates for equipment rental shall be those prescribed in GMA Circular No. 2636-E, "Schedule of Equipment Rental And Other Rental Rates for Use Between Carriers," revised January 1, 1980, and as supplemented or revised from time to time.

C. The division of cost under Paragraph B of this article shall be subject to adjustment at the end of each 12-month period subsequent to March 1, 1981 on the basis of the total number of loaded cars handled for each party during said period.

D. Loaded cars, including loaded cars in unit trains, shall be counted as provided in the separate agreements of September 19, 1934; August 30, 1940 and July 26, 1955. Loaded cars handled on trackage covered by the agreement of March 29, 1948 destined to or received from an industry located adjacent to said track shall be counted once when entering or once when leaving each zone thereof, cars entering and leaving a zone but not spotted to an industry within the zone shall receive only one count, and loaded cars originating and terminating within the same zone shall receive one count. Per-loaded-car charges for handling shall, until otherwise provided

for, be continued to be paid as specified in supplements, dated December 19, 1977, to the said agreements of September 19, 1934; August 30, 1940, and March 29, 1948. Until it shall be otherwise agreed, cars handled to and from the riverfront trackage, in Zone 1, served pursuant to the said agreement of July 26, 1955, shall be paid for at the rate of Twenty and No/100 Dollars (\$20.00) per loaded car.

E. Each party shall maintain its owned portion of the yard office-locker room, and shall include the cost thereof in its bill against the other party for maintenance under Paragraph B of this article.

ARTICLE III

A. The payment of interest rental and taxes under any of the said agreements described in the recitals hereof shall be unaffected by this agreement.

B. The cost of additions and betterments or retirements to or from any of the jointly-used facilities covered hereby shall be borne in accordance with the provisions of the applicable base agreement, except that the cost of construction of certain trackage presently being constructed at and in the vicinity of Rose Bluff Yard, aggregating 21,055 track feet, more or less, and siding 4,250 track feet, more or less, adjacent to the Davison Lead, shall be borne in the first instance by Kansas Company. Southern Company shall reimburse Kansas Company one-half the cost of said new trackage in the vicinity of Rose Bluff Yard. In the event Southern

Company uses the siding adjacent to the Davison Lead, it shall reimburse Kansas Company one-half the cost thereof.

Kansas Company shall furnish all materials for and shall construct, and shall own, said new trackage, but in consideration of Southern Company's payment of one-half the cost of such new trackage, no interest rental or other usage charge shall be made for its use. It is understood that Southern Company will pay one-half property taxes due on the 21,055 feet of trackage in the vicinity of Rose Bluff Yard, but not on the 4,250-foot siding until it shall use said track.

ARTICLE IV

A. Liability for loss and damage to property or injury to or death of persons shall be borne in accordance with Paragraph 4 of supplemental agreements dated December 19, 1977, to the said agreements of September 19, 1934, August 30, 1940, and March 29, 1948, and as specified in Article IV B hereinafter with respect to operation and maintenance of trackage covered by the said agreement of July 26, 1955. Anything in any of said agreements (including that of July 26, 1955, as herein amended) to the contrary notwithstanding, a unit train shall be deemed to be the Exclusive Equipment or Appliance (as that term is used in the above-mentioned supplemental agreements and Article IV B hereof) of the party hereto in whose account said train or the cars thereof may be.

The employees handling each unit train shall be deemed to be the Sole Employee (as that term is used in the above-mentioned supplemental agreements and Article IV B hereof) of that party in whose account said train or the cars thereof may be.

B. Sections FIFTH, SIXTH and SEVENTH of the agreement of July 26, 1955, are hereby stricken in their entirety and the following substituted in lieu thereof:

FIFTH. A. DEFINITIONS: For the purposes of this Agreement, the following definitions shall apply:

1. 'Damages' shall mean all payments made or liability for loss of or damage to any and all property, and for injuries to or death of any and all persons suffered or occasioned in connection with the maintenance, repair, renewal or operation of, the making of additions and betterments to, or operation on or over the jointly-used tracks, whether under any state or federal law, or by compromise or settlement, together with all costs and expenses incident thereto.

2. 'Joint Employee' shall mean and include any and all officers and other employees of either company while actually engaged in the maintenance, repair, renewal or operation, the making of additions and betterments to, or operation on or over the jointly-used tracks in switching service hereunder, or while engaged in rerailling cars and equipment, picking up, removing or clearing wrecks or obstructions thereon.

3. 'Sole Employee' shall mean and include any and all persons employed by or on behalf of either party, except while occupying the status of Joint Employee.

4. 'Exclusive Equipment or Appliance' shall mean the equipment or appliances solely owned by, or in the possession or control of a party, except equipment or appliances being used or operated on the jointly-used tracks by a Joint Employee; provided, however, that, with respect to cars, it shall mean those in the per diem account of a party.

5. 'Joint Property' shall mean and include the jointly-used tracks and any and all property (including locomotives) owned or used by or on behalf of either party in switching service hereunder.

Singular forms of any of the terms herein defined shall comprehend and encompass the plural forms of any of such terms.

B. ALLOCATION OF LIABILITY: Damages shall be borne by the parties as hereinafter provided:

1. When caused by:
 - a. the acts or omissions of a Sole Employee of one of the parties; or
 - b. the concurring acts or omissions of a Joint Employee and of a Sole Employee of one of the parties; or
 - c. any defect or failure of any kind in the Exclusive Equipment or Appliance of one of the parties; or
 - d. the acts or omissions of a Joint Employee concurring with a defect or failure of any kind in the Exclusive Equipment or Appliance of one of the parties,

Damages shall be borne by the party in whose employment such Sole Employee may be, or by the party whose Exclusive Equipment or Appliance was defective or failed, whether or not concurring with the acts or omissions of third persons (that is, those persons other than Sole or Joint Employees).

2. When caused by:

- a. the concurring acts or omissions of a Sole Employee of each of the parties; or
- b. the concurring acts or omissions of a Joint Employee and of a Sole Employee of each the parties; or
- c. defects of any kind in the Exclusive Equipment or Appliance of each of the parties; or
- d. the acts or omissions of a Joint Employee; or
- e. the failure of or a defect in Joint Property; or
- f. any other cause whatsoever not hereinbefore provided for,

Damages shall be borne by each party as to its Exclusive Equipment or Appliance (except the cost of rerailling cars) property in its custody or control and property upon its cars, and, as to its Sole Employees, passengers or persons on its locomotives, cars or trains, while as to third persons and their property, Joint Employees and their property, and/or Joint Property, Damages shall be borne by the parties equally. For the purpose of this paragraph, Damages which are borne equally by the parties shall be understood to include all costs and expenses arising out of or incident to the rerailling of locomotives, cars and other equipment.

Anything in this Paragraph FIFTH to the contrary notwithstanding, in case of accident in which the locomotives, cars, trains (other than locomotives, cars or trains while occupying the status of Joint Property) or Sole Employees of only one of the parties are involved, or are in its sole service, then the liability for the resulting Damages shall be borne solely by that one of the parties whose locomotives, cars, trains or Sole Employees are solely involved.

Anything hereinabove to the contrary notwithstanding, neither party shall have any claim against the other for Damages of any kind caused by or resulting from interruption or delay to its business.

Each party shall pay all Damages for which such party shall be liable hereunder, and shall indemnify and save harmless the other party against the payment of any such Damages.

In case a suit shall be commenced against either party for or on account of Damages for which the other party is solely or jointly liable hereunder, the party so sued shall give to such other party notice in writing of the pendency of such suit and thereupon such other party shall assume or join in the defense of such suit.

Either company may make settlement of any and all claims for injury to or death of persons, or for loss of or damage to property, for which the parties are jointly liable hereunder,

except that no such settlement may be made in excess of Five Thousand Dollars (\$5,000) without the prior written consent of the other company. Upon the making of any voluntary settlement as aforesaid, a release shall be procured from each claimant which shall be in form sufficient to discharge both parties to this Agreement from liability on account of such claim, and a copy thereof shall be furnished each company.

Each party assumes liability for its failure to comply with any law or governmental regulation, and agrees to reimburse and indemnify the other party for any fines, penalties, cost or charges resulting from any violation of such law or regulation. In the event of violation of the Safety Appliance Act for which the switching carrier is fined, the party in whose account the car is shall reimburse the switching party the amount paid in satisfaction of such fine.

ARTICLE V

This agreement shall be construed liberally so as to secure to each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party.

ARTICLE VI

This agreement shall be effective March 1, 1981, and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as of this, the 2ND day of September, 1981.

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

By *V. S. Carter*

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

APPROVED AS TO FORM AND EXECUTION:

G. E. Guinn
VICE PRESIDENT - LAW

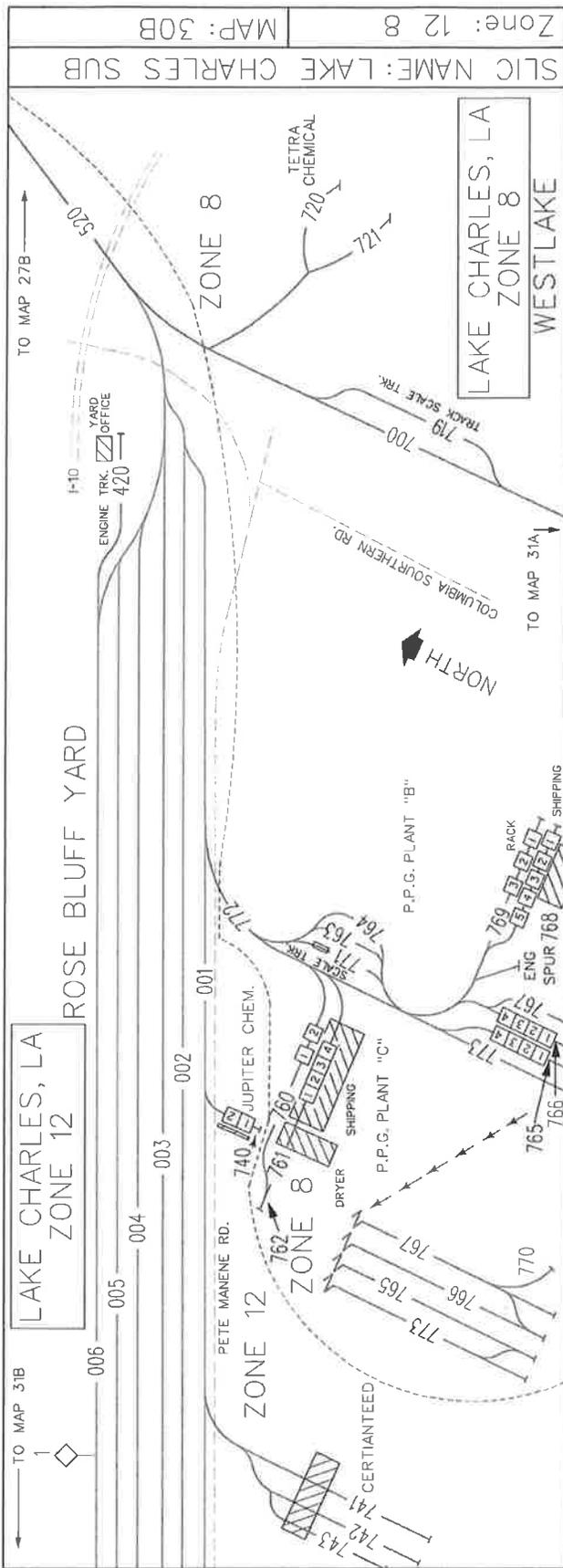
RLD
9/21/81

By

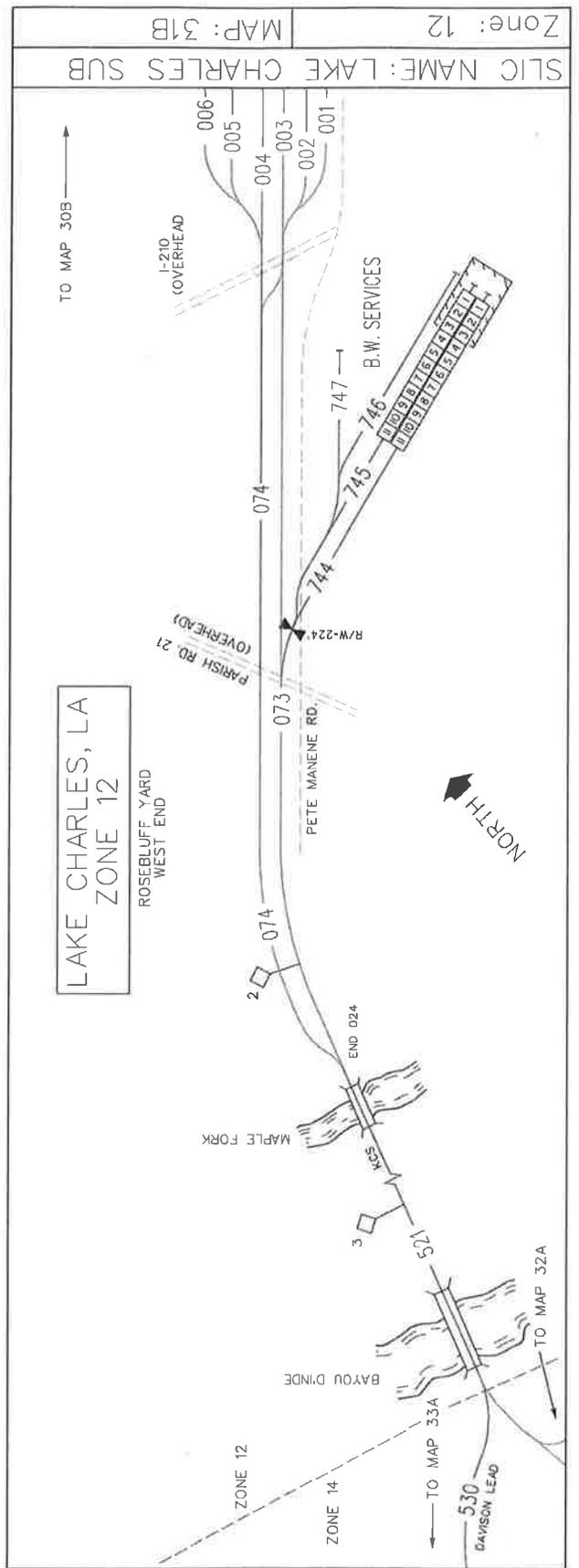
L. J. Furlow
Assistant to Vice President

[Handwritten signature]
Over Bump

KCS SLIC BOOK PAGES, ROSEBLUFF YARD

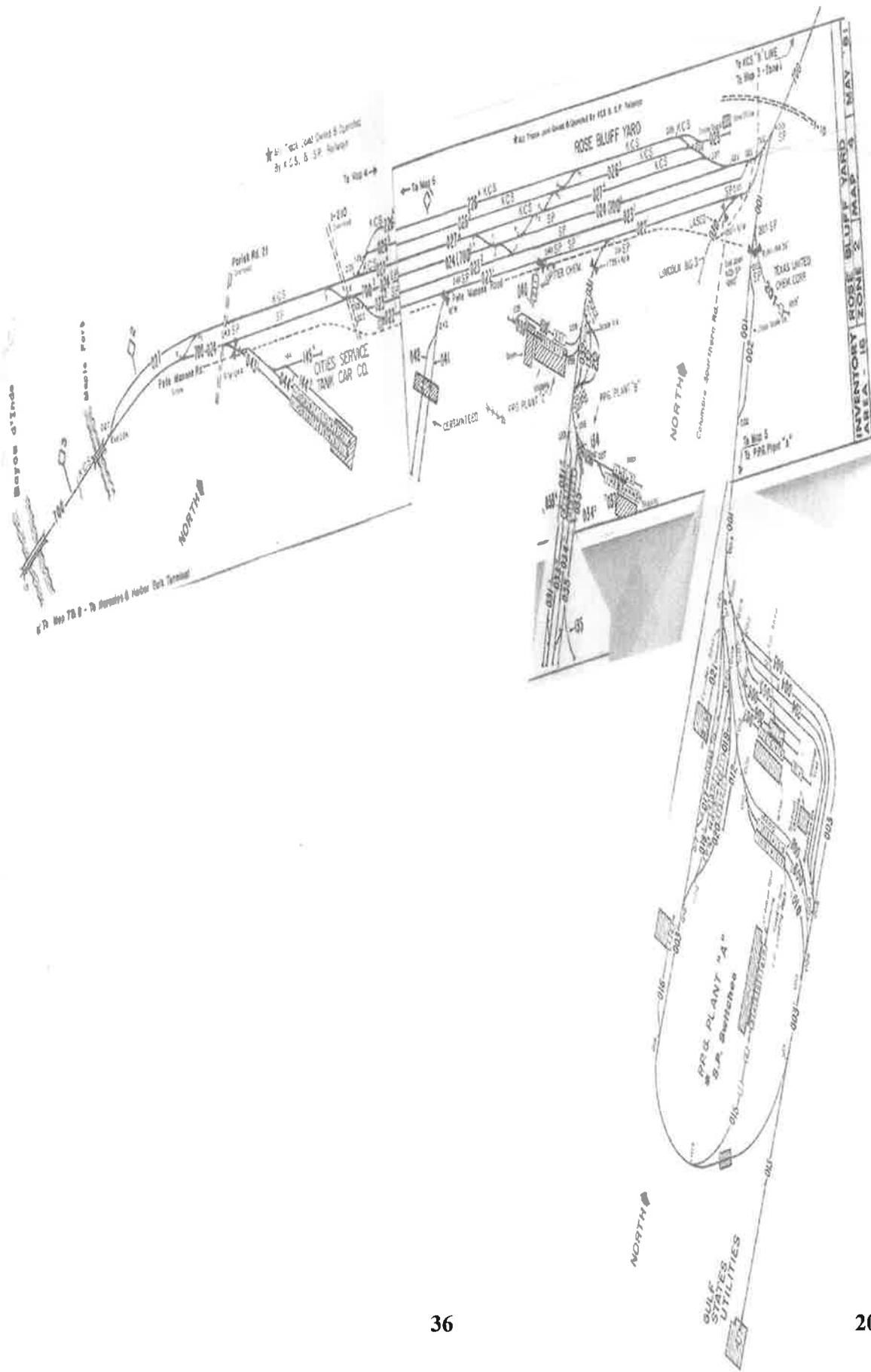


PAGE 30



PAGE 31

KCS SLIC BOOK PAGES, ROSEBLUFF YARD AND ADJOINING SHIPPERS



VERIFICATION

I, Jimmy Wayne Scott, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing verified statement.

Executed on this 21st day of August, 2015 at Westlake, Louisiana.



Jimmy Wayne Scott
Senior Trainmaster
The Kansas City Southern Railway Company

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

REPLY OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

EXHIBIT E

RECENT UP TIMETABLE



HOUSTON AREA TIMETABLE #5

Effective 0900 Monday, August 29, 2011

L. M. Fritz, Executive Vice President - Operations
S. R. Barkley, Vice President - HDC & Network Operations
J. M. Santamaria, Vice President - Transportation
R. S. Blackburn, Vice President - Northern Region
G. D. Workman, Vice President - Southern Region
K. H. Hunt, Vice President - Western Region
D. A. Connell, Vice President - Engineering
B. J. Kanuch, Chief Mechanical Officer
T. F. Jacobi, Vice President - Operating Systems & Practices
R. M. Grimaila, Vice President - Safety, Environmental & Security

This document supersedes:

Union Pacific Railroad Houston Timetable 4 effective Jul 30, 2007

LAFAYETTE SUBDIVISION (0595)

Radio Display:							
Iowa Jct. to Hatchery 017-017- (*52)							
Hatchery to Dawes 059-059- (*50)							
Mile Post	Track Layout	Rule 6.3	CP #s	WEST STATIONS	EAST STATIONS	Sta. #s	Siding Feet
205.4		CTC	L680	IOWA JCT. (1.5)			
207.0			LF207	IOWA		LS546	9138
208.9			LF209	(8.4)			
215.4			LF215	MALLARD JCT. (3.2)	BT	LS538	
218.6			LF218	LAKE CHARLES (2.3)		C 720	
220.9				CALCASIEU RIVER (0.3)	D(M)		
221.2				(X)KCS(A) (1.6)			
222.8			LF222	(X)KCS(M) (0.2)			
223.0			LF223	LOCKMOOR		LS519	10500
225.2			LF225	(4.6)			
229.8			LF230	BRIMSTONE		LS508	10500
232.1			LF232	(4.2)			
234.0			LF234	EDGERLY (12.6)			SIT YD
246.6			LF247	TOOMEY (HOLD SIGNAL) (4.5)			
251.1			LF251	ECHO		LS487	N10800
253.3			LF253	(8.2)			S10000
259.3			LF259	FRANCIS		LS478	9800
261.4			LF261	(11.4)			
270.7			LF271	CONNELL		LS467	10500
272.7			LF273	(6.3)			
277.0			LF277	TWR 31 (1.1)		LS462	
278.1				(KCS) NECHES RIVER (0.5)	D(M) (X)UP(A)		
278.6		CTC	LF278	WALL ST. (0.6)			
279.2		2MT	LF279	(X)BNSF(M) (0.1)			
279.3			LF979	STATION 7A (0.8)	X		
280.1				BEAUMONT (0.2)	BT	B 461	YARD
280.3			LF280	STATION 6 (0.1)	X		
280.4			LF980	TOWER 74 (0.3)	X		
280.7			LF281	STATION 4 (1.5)	X		
282.2		CTC	LF282	LANGHAM ROAD (4.1)	X		
286.3			LF286	AMELIA (HOLD SIGNAL) (6.3)			
292.6			LF293	CHINA		LS441	11300
294.8			LF295	(6.1)			
305.9			LF306	DEVERS		LS428	11700
308.3			LF308	(11.3)			
317.2			LF317	AMES		LS416	10300
319.4			LF319	(9.6)			
326.8			LF327	DAYTON		LS407	12574
327.7			LF328				
329.3			LF329	(3.5)			
330.3			LF330	DAYTON YD LEAD (7.8)			YARD
338.1			LF338	CROSBY		LS395	14100
341.1			LF341	(8.6)			
346.7			LF347	HATCHERY		LS382	
			LF348	(1.5)			

348.2	CTC	LF348	FAUNA	LS379	13600
351.1		LF351	(4.8)		
353.0		LF353	DAWES	LS378	

(147.5)

SI-01 MAIN TRACK AUTHORITY

CTC: Entire subdivision

SI-02 MAXIMUM SPEED TABLE

Maximum Speed	MPH	
Between Mileposts	PSGR	FRT
205.4 and 353.0		
(Except as Below).....	79	70
205.4 and 205.5.....	35	35
215.5 and 220.6.....	70	60
220.6 and 220.7.....	25	25
220.7 and 222.8.....	40	40
222.8 and 229.0.....	70	60
247.0 and 248.5.....	70	60
248.5 and 250.0.....	40	40
250.0 and 253.1.....	50	50
253.1 and 256.3.....	60	50
256.3 and 257.3.....	35	35
276.7 XING.....	35+	35+
257.3 and 276.9.....	70	60
276.9 and 278.0.....	20	20
278.0 and 279.3.....	15	15
279.3 and 280.1.....	30	30
280.6 and 282.2.....	70	60
282.2 and 283.1.....	70	70
320.0 and 322.3.....	45	45
322.3 and 327.6.....	60	60
327.6 and 342.2.....	70	70
342.2 and 343.3.....	60	60
343.3 and 344.2.....	30	30
344.2 and 353.0.....	70	70

SI-03 OTHER SPEED RESTRICTIONS

Maximum Speed	MPH
1. Thru Sidings & Turnouts (No Exceptions)	
2. Dual Control Switch Turnouts	
CP L680-turnout to Lake Charles Sub....	40
Crossovers between MP 280.1 & MP 278.1.	15
3. Misc. Speed Restrictions	
CP L680 to and from BNSF RR.....	30
Trinity Industries Trks. (MP 272.6)....	5
Track scale Chevron Plant (Orange)....	5
City Lead Track (MP 257.1).....	5
Wye at Lake Charles Yard - MP 218.....	4

SI-04 MAIN TRACK DESIGNATIONS

Two main tracks:
Between Wall St. CP LF278 and
Langham Road CP LF282.

SI-05 MILEPOST EQUATIONS

MP 277.0 = KCS MP 764.9;
MP 278.1 = KCS MP 766.0.
CP LF328 = Dayton Jct. on the Baytown Subdivision.
MP 250.0 = MP 250.22

LAFAYETTE SUBDIVISION (0595)

SI-06 RCL OPERATIONS

Designated Remote Control Area:
 Beaumont Yard between MP 284.0 and CP LF278;
 Sabine Industrial Lead between MP 20.0 and CP LF279.

Lake Charles Yard
 Signs designating the Remote Control Area are placed at MP 214.0 and MP 222.0.

Designated Remote Control Zones:

ZONE 1:
 Hump Lead: From hump shanty westward to West Hump lead switch at MP 283.02

ZONE 2:
 Beaumont Siding: From Track 201 to siding crossover switch east end of yard (including crossover) eastward to clearance point east end.

ZONE 3:
 Track 201: From Track 201 east end of yard at Track 202 to Track 201 crossover switch (including x-over) eastward to clearance point.

ZONE 4:
 Track 202: From east end of Big Yard switching lead at Track 202 switch eastward to Roy Jones switch point.

ZONE 5:
 New Lead: From west end of New Lead to 19 extension crossover switch to clearance point at east end of New Lead.

Lake Charles Yard:
ZONE 1:
 On the West Switching Lead from the West clearance point of the 121 Crossover switch westward to the clearance point of the West leg of the wye.

ZONE 2:
 On the East Switching Lead from the clearance point east of the 51 crossover Eastward to Bunker Road.

Yardmaster will be the supervisor of the zone and maintain the zone log.
 Radio Channel - 040-040

See Livonia Superintendent Bulletin for detailed RCL operation information.

SI-07 ITEM 13 TRAIN DEFECT DETECTORS

(#) 210.0	(#) 288.3	% 345.0
(#) 228.1	% 296.6	(#)& 351.3
(#) 242.1	(#) 303.5	
(#) 256.1	(#)& 312.3	
% 263.6	% 323.4	
% 268.3	% 324.8	
(#) 273.9	(#)& 332.9	

SI-08 RULES ITEMS

Rule 1.45 Designation Of Control Operators:
 Lafayette Sub. dispatcher controls from west end Beaumont Yard (Langham Road) MP 282.2, including dual control switches, to but not including dual control switches at Wall Street. This includes BNSF crossing at CP-LF279. KCS train dispatcher controls movement over bridge from Wall Street.

5.8.2 (7): Item 9 of the System Special Instructions applies at and between:
 Langham Rd, MP 282.43 and Keith Rd, MP 285.14, Beaumont, Texas.

Rule 9.12.2:
 Interlocking not shown on station page: KCS crossing 1.8 miles east of Guffey on Chaison Spur (LF879). This interlocking is normally lined for KCS movement. Instructions for operation posted at the crossing. Refer to KCS manual interlocker located at MP 222.8.

When signal indicates Stop, a crew member must immediately contact the control operator for authority to pass the Stop indication. A crew member must assure that derails on conflicting route are in the derailing position and that no conflicting movement is evident. If derail cannot be placed in the derailing position, and no conflicting movement is evident, flag protection must be provided.

Rule 9.12.3:
 Refer to KCS Automatic Interlocker located at MP 221.2:
 When signal indicates Stop, a crew member must immediately contact the control operator for authority to pass the Stop indication. A crew member must assure that derails on conflicting route are in the derailing position and that no conflicting movement is evident. If derail cannot be placed in the derailing position, and no conflicting movement is evident, flag protection must be provided.

Neches River Bridge KCS MP 765.9:
 This drawbridge is designated as a manual interlocking controlled by KCS Train Dispatcher and controls movement from Wall St. Track cars will proceed over this bridge only after receiving track and time authority.

SI-09 FRA EXCEPTED TRACKS

Beaumont Yard:
 Rip Tracks; Engine Tracks; 7th Street Team Track; West End Team Track; Old Main Track, from crossing frog to downtown.

Old Francis: Team Track.

Lake Charles:
 Rip Tracks; Engine Tracks; Old DeRidder Track, to end of track.

SI-10 BUSINESS TRACKS

Track Name	MP	STA. #S
Orange	257.9	LS481
Trinity Industries	271.6	. . .
Korf	276.4	LS463
Amelia	284.0	B 453
Raywood (E).....	313.0	LS421
Liberty	321.4	LS413
Audrey (W).....	331.9	LS403
Sheldon	345.4	LS389

LAFAYETTE SUBDIVISION (0595)

SI-11 INDUSTRIAL LEADS

Sabine Industrial Lead: (0599)
 MP 29.8 (South Yard Beaumont) eastward to
 MP 13.2 (End of Track)-16.6 miles.
 Maximum Speed 20 MPH except between:
 MP 21.0 and MP 13.2 - 10 MPH.
 Maximum gross weight - 143 tons
 (This includes the Chaison Spur business track).

Train Defect Detector:
 type (#), located at MP 27.0.

Business Tracks	MP	Sta.#'s
Williams	14.0	LF021
Viterbo	21.3	LF013
Chaison Spur	26.0	LF009
Guffey	25.5	LF006

Lake Charles Industrial Lead: (0477)
 Off main track at Mallard Jct. (MP 215.4);
 Extends from MP 0.0 to MP 12.1
 (Gate at Port of Lake Charles) 12.1 miles.
 Maximum speed 10 MPH except:
 Wharves and Apron Docks 5 MPH.

Business Tracks	MP	Sta.#'s
American Press	0.5
Spartech Poly Com	2.1
Farmers Rice	3.2
Beer House	9.4

Harbor Industrial Lead: (0476)
 Off Lake Charles Industrial Lead at MP 4.4.
 Extends from MP 0.0 to MP 12.4.

Rosebluff Industrial Lead: (0594)
 Off Scale Track MP 222.3. Extends from KCS Scale
 Track switch, MP 0.0 to MP 8.7 at end of track.
 KCS operates jointly with UPRR between
 MP 0.0 and MP 2.5.

SI-12 TONNAGE RESTRICTIONS/TPOB

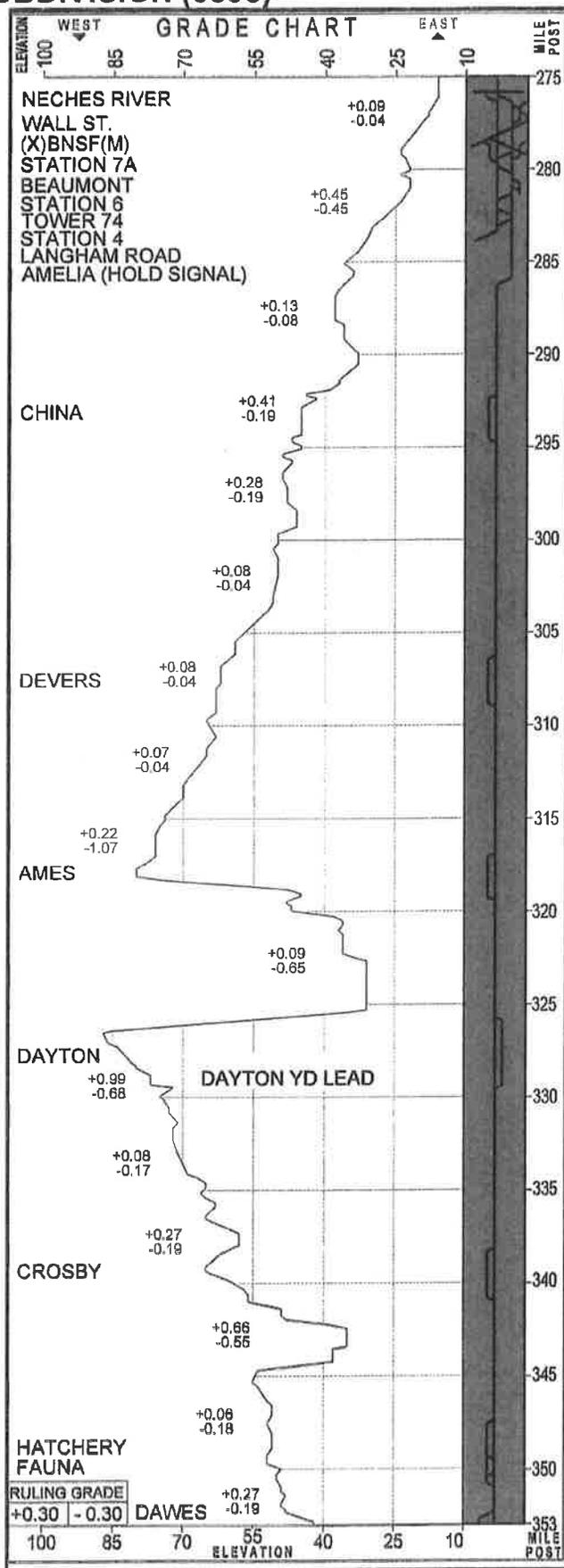
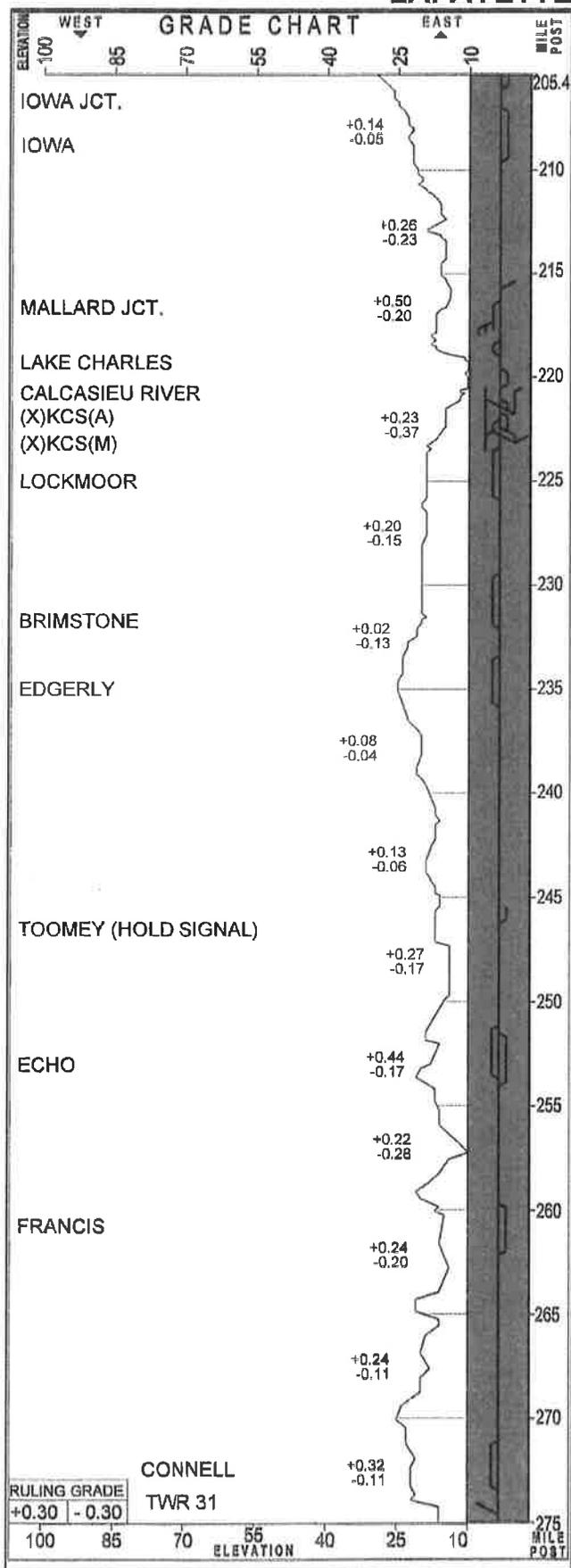
Maximum gross weight: 158 Tons.

SI-13 TRAIN MAKE-UP RESTRICTIONS - None.

SI-14 MISC. INSTRUCTIONS

Six Axle Locomotives are prohibited on the
 following tracks:
 * Sheldon (MP 344.6)
 * Crosby Chemco (MP 341.4)
Before entering Main Track at MP 344.66:
 You must obtain Main Track Authority before
 lining switch point derail. The derail is tied
 into the signal system.

LAFAYETTE SUBDIVISION (0595)



PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

REPLY OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

EXHIBIT F

COPY OF DEED TO KCS AND T&NO

DEED

KNOW ALL MEN BY THESE PRESENTS THAT:

RECONSTRUCTION FINANCE CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the United States, which corporation has succeeded, pursuant to the provisions of Public Law 109, 79th Congress, approved June 30, 1945, to all the rights and assets of DEFENSE PLANT CORPORATION, and the UNITED STATES OF AMERICA, (both jointly hereinafter referred to as "Vendor"), both acting by and through the War Assets Administrator under and pursuant to Executive Order 9689, dated January 31, 1946, and the power and authority contained in provisions of the Surplus Property Act of 1944, (58 STAT 765) and War Assets Administration Regulation No. 1, as amended, (12 FR 863), herein represented by Cannon D. Clark, Deputy Regional Director, Office of Real Property Disposal, New Orleans, Louisiana, duly authorized by a Delegation of Authority of the War Assets Administrator, executed on November 22, 1946, hereto attached, does hereby grant, bargain, sell, convey, assign, and deliver without warranty, recourse, or liability whatsoever, even as to the restitution of the purchase price, but with full substitution and subrogation in and to all rights and actions of warranty against all preceeding owners and vendors, unto the TEXAS AND NEW ORLEANS RAILROAD COMPANY, a Texas corporation, appearing herein and accepting these presents by and through R. W. Barnes, its Vice-President, duly authorized, pursuant to a resolution adopted by its Board of Directors on May 12, 1947, a certified copy of which is annexed hereto, and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation, appearing herein and accepting these presents by and through W. D. Burch, its ^{Executive} General Agent, duly authorized, (both jointly hereinafter called "Purchaser"), their successors and assigns, all and singular, the following described property situated in the Parish of Calcasieu, State of Louisiana, which said property has been duly declared surplus to the War Assets Administrator pursuant to the provisions of the above mentioned statutes and regulations:

I. Main industrial land track extending approximately 4.83 miles in a general southerly and southwesterly direction beginning at point of connection with Kansas City Southern Railway Magnesium Plant track at engineer station 0/00, said point being near northeast corner of southeast quarter of Section 33, Township 8 South, Range 9 west in Calcasieu Parish, Louisiana, except that first 200 feet of track owned by K.C.S. Railway is not included, and ending at engineer station 254/85 at north line of Public Highway located along south line of Section 18, Township 10 South, Range 9 west in Calcasieu Parish, Louisiana; two storage tracks, 2,096.6 feet and 2,627.8 feet in length, located near point of beginning of main lead at place commonly known as "Horsebluff Yard"; one storage track, 1,074.4 feet in length, near end of main lead; turnout connections for three tracks, approximating a total of 727 feet of track, diverging from said main lead track and for two tracks, approximating a total of 407 feet of track, diverging from storage track, all situated within said Section 18, and lying within main lead right-of-way of normal width of 80 feet each side of center line of main lead track; drainage structures under trackage and roads, consisting of various diameter concrete pipes, Box Culverts, timber trestling and steel girder span; highway crossing signs, private road crossing and public road crossing improvements; and other improvements of any nature pertaining to construction or operation of all trackage described; total mileage of trackage described herein above amounting to 4.788 of main lead track and 1.835 miles of other track, it being understood that turnout connection to so-called Maplewood industry spur is not included in trackage involved. All "Stations" herein referred to are delineated on a plat of survey prepared by F. Shutts' Sons, dated June 7, 1943, revised March 22, 1946, and April 22, 1946; a print of which is attached hereto and made a part hereof for reference.

II. The following servitudes, rights-of-way, and easements:

1. A right-of-way and servitude for the construction, operation, renewing, alteration, inspection, and maintenance of a railroad track or railroad tracks, together with all sidings, switch tracks, constructions, buildings, and/or appurtenances connected with or incidental to the construction, operation, and maintenance of a railroad and railroad track or tracks upon, over, across, under and through the following described land together with the right of ingress to and egress from the property together with all of the rights and privileges and appurtenances which may be required for the full enjoyment of said rights together with the right to construct, operate and maintain telephones and telegraph lines and together with the privilege of removing at any time any and all of the said improvements, said right-of-way being one hundred (100) feet wide and measuring fifty (50) feet on each side of the following described center lines:

a. (Referred to for identification purposes as Tract No.1)
Beginning at a point 733.4 feet west and 358 feet south of the northeast corner of the northeast quarter of the southeast quarter of Section 33, Township 8, South, Range 9 west, southwest district of Louisiana.

thence north 61° 15' east, 464 feet to the center line of the Kansas City Southern Railway spur at Station 106 plus 00 of said spur serving the Magnesium Plant, containing approximately five tenths (.5) of an acre.

Being the same right-of-way acquired by Defense Plant Corporation from the Mathieson Alkali Works, Inc., by deed dated October 20, 1944, bearing file number 317927 and recorded in Book 378 at Page 232 of the records of Calcasieu Parish.

- b. (Referred to for identification purposes as Tract No. 2)
Beginning at a point in the center of the North-South public road from U. S. Highway No. 90 to the Magnesium Plant, said point being 793.4 feet East and 568 feet South of the Northeast corner of the Northeast Quarter of the Southeast Quarter (NE 1/4 of SE 1/4) of Section 33, Township 9 South, Range 9 West. Thence South 63° 15' West to the West line of the Northeast Quarter of the Southeast Quarter (NE 1/4 of SE 1/4) of said Section 33, containing approximately 1.3 acres.

- c. (Referred to for identification purposes as Tract No. 27)
Over and across the Northeast Corner of the Southwest Quarter of the Southeast Quarter (SW 1/4 of SE 1/4) of Section 33, Township 9 South, Range 9 West, southwestern district of Louisiana, being 100 feet wide, 80 feet on each side of the center line of said main lead track and containing approximately .1 of an acre of land.

"b" and "c" being the same rights-of-way acquired by Defense Plant Corporation from Lock Moore & Co., Ltd., by right-of-way deed dated February 26, 1944, bearing file number 308644 and recorded in Book 370, Page 151 of the records of Calcasieu Parish.

- d. (Referred to for identification purposes as Tract No. 3)
Beginning at a point nineteen and one-half (19 1/2) feet North of the Southwest corner of the Northwest Quarter of the Southeast Quarter (NW 1/4 of the SE 1/4) of Section 33, Township 9 South, Range 9 West, Southwestern District of Louisiana. Thence North 83° 15' east, across said Northwest Quarter of Southeast Quarter (NW 1/4 of SE 1/4) to the east line of same and containing approximately 3.8 acres.

Being the same right-of-way acquired by Defense Plant Corporation from Sam Love, Christ Love, and Norfolk Love by deed dated February 28, 1946, filed for record in Conveyance Book 397, page 383; and from Margaret Lordon by deed dated May 14, 1946, filed for record in Conveyance Book 403, page 8; and from Anna G. Byars by deed dated May 14, 1946, filed for record in Conveyance Book 403, page 9.

- e. (Referred to for identification purposes as Tract No. 13)
Beginning at a point approximately at the NE corner of said Section 5; Township 10 S Range 9 W. Thence S 63° 15' W 1320 feet, more or less, to the West line of the NE 1/4 of NE 1/4 of Section 5, and containing approximately 3.4 acres.

Being the same right-of-way acquired by Defense Plant Corporation from Edgar Miller, Ernest Miller, Mrs. Hannah L. Monday, Mrs. Hilma B. Mathsen, Elaine L. Ronckenstein, Mrs. Solma L. Martinez Fla, and Mrs. Irma L. Tieman by deed dated May 8, 1946, filed for record May 16, 1946, in Conveyance Book 370, page 408.

- e.(1) Referred to for identification purposes as Tract No. 13 Supplement Beginning at a point approximately

57 feet north of the southwest corner of the NW 1/4 of the NE 1/4 of Section 5, Township 10 South, Range 9 West. Thence North 63° 15', east 1320 feet, more or less, to the east line of the NW 1/4 of the NE 1/4 of Section 5, and containing approximately 3.4 acres.

Being the same right-of-way acquired by the Defense Plant Corporation from the Cities Service Refining Corporation by deed dated October 21, 1944, and recorded in Book 352, page 13 of the records of Calcasieu Parish.

- f. (Referred to for identification purposes as Tract No. 14) Beginning at a point approximately 57 feet North of the Southeast corner of the N 1/2 of the NE 1/4 of Section 5, T 10 S, R 9 W. Thence S 63° 15' W, 127 feet more or less to the South line of said N 1/2 of the NE 1/4 of Section 5, and containing approximately .2 of an acre.

Being the same right-of-way acquired by Defense Plant Corporation from Cities Service Refining Corporation by right-of-way deed dated February 2, 1944, bearing file number 305935 and recorded in Book 364, page 487 of the records of Calcasieu Parish.

- E. (Referred to for identification purposes as Parcel 1 of Tract No. 26) Beginning at a point on the N line of Section 18, Township 10 South, Range 9 West, which is 681.4 feet W of the NE corner of the NE 1/4 of said Section 18, thence S 15°, 16' W to the S boundary of the NE 1/4 of the NW 1/4 of Section 18, and 288.7 feet E of the SW corner of the NE 1/4 of the NW 1/4 of Section 18 containing 3.15 acres, more or less.

Being part of that land received in fee by deed from the Cities Service Refining Corporation to Defense Plant Corporation dated August 25, 1944, and recorded in Book 575 at Page 288 of the records of Calcasieu Parish. It being the intent to herewith convey only a servitude as before described over said land.

- g.(1) (Referred to for identification purposes as Parcel 2 of Tract No. 26) Beginning at a point on the South line of the Northeast Quarter of Northeast Quarter, Section 18, Township 10 South, Range 9 West, Southwestern District of Louisiana; said point being the center of the railway right-of-way, and 288.7 feet North 89° 59' East, from the Southwest corner of said Northeast Quarter of Northeast Quarter. Thence South 15° 16' West, 406.7 feet to Station 219 plus 98.7 of the railway survey; said point being the point of a 3° curve to the left, whose length is 508.9 feet, whose radius is 1910.1 feet and whose angle of intersection is 18° 16'. Thence, from the above described point of curve, southerly around said curve to the left a distance of 508.9 feet to Station 225 plus 07.0. Thence due South 371.5 feet to the East and West center line of Section 18. Thence due South 2606.5 feet to a point 50 feet North of the South line of said Section 18, Township 10 South, Range 9 West.

Said right-of-way containing 9.08 acres, in Calcasieu Parish, Louisiana; being that land received in fee by deed from the Cities Service Refining Corporation to Defense Plant Corporation dated August 25, 1944, and recorded in Book 376, Page 43 of the records of Calcasieu Parish.

Excluded from the 100 foot right-of-way, herewith conveyed, are two valve gas reduction stations on the West or right side of the railway center line; the first one lying between Station 252 plus 54.2 and Station 252 plus 53.2 and whose East boundary is located 38.3 feet West or to the right of the center line of the railroad and whose West boundary is the East boundary of the Firestone tract which is located ninety-five (95) feet West of the center line of said railway, and the second between Station 253 plus 61.5 and 254 plus 62, the East boundary of this tract lies 35 feet West or right of the center line of the main line railway and the West boundary is the East line boundary of the Firestone tract which is ninety-five (95) feet West of the center line of the railway, it being the intent to herewith convey only a servitude as before described over said land.

2. A perpetual easement for the construction, use, operation, maintenance, repair, and removal of a railroad track or tracks, a pipeline or pipelines, and electric power, telephone and telegraph lines, poles, towers, and guys 100 feet in width, over and across the following parcels of land, all located in Township 9 South, Range 9 West, 50 feet on each side of a center line, said easement being more particularly described as follows:

- a. (Referred to for identification purposes as Tract No. 4)
Beginning at a point where the center line of said railroad track intersects the center line of Section 33, said point being located S 83° 15' W, 2523 feet from the switch point of said railroad track where it connects with a spur track of Kansas City Southern Railway which serves the Magnesina Plant; Thence in a northerly direction along the center line of said Section 33 to a point distant 50 feet northwest of the center line of said railroad track as measured at right angles thereto.

Thence S 63° 15' West along a line parallel to the center line of said railroad track and distant therefrom 50 feet to a point in the dividing line between lands of Primus Haynes and lands of Pinky Mayo, said point being in the line dividing the SE 1/4 of SW 1/4 from the NE 1/4 of SW 1/4 of said Section 33.

Thence in an easterly direction along the dividing line between lands of Primus Haynes and lands of Pinky Mayo, said dividing line coinciding with the dividing line between the SE 1/4 of SW 1/4 and the NE 1/4 of SW 1/4 of said Section 33, to a point in the center line of the S 1/2 of said Section 33. Thence northerly along the center line of said Section 33 for a distance of 19.5 feet to the point of beginning.

The above described right-of-way being a triangular shaped parcel of land lying in the extreme southeast corner of the NE 1/4 of SW 1/4 of said Section 33, containing an area of 0.13 acres, more or less.

- b. (Referred to for identification purposes as Tract No. 5)
Beginning at a point where the center line of said railroad track intersects the dividing line between lands of Pinky Mayo and lands of Primus Haynes, said point being in the dividing line between the SE 1/4 of SW 1/4 and the NE 1/4 of SW 1/4 of said Section 33.

Thence along the center line of said railroad track S 63° 15' N to a point in the dividing line between lands of Pinky Mayo and lands of Rose Williams, et al, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track.

The above described right-of-way being located in the extreme northeast corner of SE 1/4 of SW 1/4 of said Section 33, containing an area of 1.28 acres, more or less.

- c. (Referred to for identification purposes as Tract No. 6)
Beginning at a point in the intersection of the lands of Thompson M. Dietz, et al, and the lands of Rose Williams, et al, said point also being in the intersection of the lands of Pinky Mayo, said point being located 485 feet westerly of the center line of said Section 33.

Thence in an easterly direction along the dividing line of the lands of Thompson M. Dietz, et al, and the lands of Pinky Mayo, to a point distant 50 feet southeast of the center line of said railroad track.

Thence S 63° 15' W along a line parallel to the center line of said railroad track and distant therefrom 50 feet to a point in the dividing line between the lands of Thompson M. Dietz, et al, and the lands of Rose Williams, et al.

Thence northerly along the dividing line between the lands of Thompson M. Dietz, et al, and the lands of Rose Williams, et al, to the point of beginning.

The above described right-of-way being a triangular shaped parcel of land lying in the SE 1/4 of SW 1/4 of said Section 33, containing an area of 0.08 acres, more or less.

- d. (Referred to for identification purposes as Tract No. 7)
Beginning at a point where the center line of said railroad track intersects the dividing line between lands of Rose Williams, et al, and the lands of Pinky Mayo.

Thence along the center line of said railroad track S 63° 15' N to a point in the dividing line between lands of Rose Williams, et al, and the lands of Arthur J. Vatter, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track.

The above described right-of-way being located in the SE 1/4 of SE 1/4 of Section 33, containing an area of 1.52 acres, more or less.

- e. (Referred to for identification purposes as Tract No. 8)
Beginning at a point where the center line of said railroad track intersects the dividing line between lands of Arthur J. Vatter and the lands of Rose Williams, et al.

Thence along the center line of said railroad track

S 63° 15' W to a point in the dividing line between lands of Arthur J. Vatter and lands of Leonise Lee, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track.

The above described right-of-way being located in the SE 1/4 of SW 1/4 and in the SW 1/4 of SW 1/4 of said Section 33, containing an area of 0.62 acres, more or less.

f. (Referred to for identification purposes as Tract No. 9)

Beginning at a point where the center line of said railroad track intersects the dividing line between lands of Leonise Lee and lands of Arthur J. Vatter.

Thence along the center line of said railroad track S 63° 16' W to a point in the dividing line between lands of Leonise Lee and the lands of Jim Lee, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track.

The above described right-of-way being located in the SE 1/4 of SW 1/4 and in the SW 1/4 of SW 1/4 of said Section 33 containing an area of 0.99 acres, more or less.

g. (Referred to for identification purposes as Tract No. 10)

Beginning at a point where the center line of said railroad track intersects the dividing line between lands of Jim Lee and lands of Leonise Lee.

Thence along the center line of said railroad track S 63° 15' W to a point in the dividing line between the lands of Jim Lee and the lands of George W. Law, having a total width of 100 feet, 50 feet on each side of said center line of said railroad track.

The above described right-of-way being located in the SW 1/4 of SW 1/4 of said Section 33, containing an area of 0.61 acres, more or less.

h. (Referred to for identification purposes as Tract No. 11)

Beginning at a point where the center line of said railroad track intersects the dividing line between lands of George W. Law and lands of Jim Lee. Thence along the center line of said railroad track S 63° 16' W to a point where the said center line of said railroad track intersects the dividing line between Sections 32 and 33; having a total width of 100 feet, 50 feet on each side of said center line of said railroad track subject to such rights as are held by others in the public road known as the "Farrish Road". The above described right-of-way being located in the extreme northwest corner of the SW 1/4 of SW 1/4 of said Section 33, containing an area of 1.58 acres, more or less.

i. (Referred to for identification purposes as Tract No. 12)

Beginning at a point where the center line of said railroad track intersects the dividing line between Sections 32 and 33.

Thence in a northerly direction to a point distant 50 feet northwest of the center line of said railroad track as measured at right angles thereto.

Thence S 65° 15' E along a line parallel to the center line of said railroad track and distant therefrom 50 feet to a point in the dividing line between said Section 32 and Section 5 of Township 10 South, Range 9 West.

Thence in an easterly direction along the dividing line of said Sections 32 and 5 to a point common to Sections 32 and 33 of Township 9 South, Range 9 West, and Sections 4 and 5 of Township 10 South, Range 9 West. Thence in a northerly direction along the dividing line between said Sections 32 and 33 to the point of beginning, subject to such rights as are held by others in the public road known as the "Parish Road". The above described right-of-way being a triangular shaped parcel of land lying in the extreme Southeast corner of said Section 32, containing an area of 0.10 acres, more or less.

All of the above described easements, from "a" through "i", inclusive, were acquired by the United States of America by a Declaration of Taking dated September 26, 1945, in the suit entitled, "UNITED STATES OF AMERICA vs Nine Parcels of Land, ET AL.", being No. 855 of the Civil Docket of the United States Court for the Western District of Louisiana, recorded in Conveyance Book 391, Page 149, and being confirmed in a judgment in the same style and numbered case rendered 21 February 1946.

8. A right-of-way one hundred (100) feet in width, being 50 feet on each side of the following described center lines for the following purposes:

- (i) For the construction, operation, renewing, alteration, inspection and maintenance of a railroad track or tracks, together with all sidings, switch tracks, constructions, buildings and/or appurtenances connected with or incidental to the construction, operation and maintenance of a railroad and railroad track or tracks.
- (ii) For the construction, operation, renewing, alteration, inspection and maintenance of electrical transmission and power lines and/or telephone and telegraph lines, together with the right to place, erect and maintain, inspect, add to the number of and relocate at will poles, towers, cross-arms and fixtures, and string wires and cables adding thereto from time to time, and to cut and remove from the below described property, and the property adjoining the same for a distance of forty (40) feet south, any trees, overhanging branches, or other obstructions.

(iii) For the purpose of laying, operating, renewing, altering, inspecting and maintaining pipe lines for the transmission of oil, gas, petroleum, and other products.

- a. (Referred to for identification purposes as Tract No. 15)
Over and across the South Half of the NW 1/4 of Section 5, T 10 S, R 9 W, Southwestern District of Louisiana, and more fully described as: Beginning at a point on the North line of said tract approximately 105 feet west of its northeast corner; thence S 63° 16' W, 1395 feet more or less, to Station 105 plus 80.0, at the point of curve of a 50 curve to the left.

Thence following S° curve to the left to the South Boundary of the S 1/2 of the NW 1/4 of said Section 5, and containing 5.4 acres, more or less.

Being the same right-of-way acquired by Defense Plant Corporation from Sisters of Charity of the Incarnate Word, by deed dated January 31, 1944, bearing file number 305913 and recorded in Book 368, page 177 of the records of Calcasieu Parish.

- b. (Referred to for identification purposes as Tract No. 16)
Over and across the Northwest corner of the N 1/2 of the NW 1/4 of Section 5, T 10 S, R 9 W, Southwestern District of Louisiana; said right-of-way being 100 feet wide, 50 feet on each side of the center line of said track, as now located, and containing .8 of an acre, more or less.

Being the same right-of-way acquired by Defense Plant Corporation from Ernest K. Miller, Edgar Miller, Hannah L. Monday, Hilma E. Wachsen, Elaine Benkenstein, Irma L. Tieman, Selma W. Pla by deed dated May 8, 1944, filed for record May 16, 1944, in Conveyance Book 371, page 219 of the records of Calcasieu Parish.

- c. The right-of-way hereby conveyed over and across this Parcel "3 b" does not include a right-of-way for the purpose of laying, operating, renewing, altering, inspecting and maintaining pipe lines for the transmission of oil, gas, petroleum, and other products.

- c. (Referred to for identification purposes as Tracts Nos. 17, 18, and 19) Over and across the NE 1/4 of SE 1/4 of Section 5, T 10 S, R 9 W, being 100 feet wide, 50 feet on each side of the center line of said track, as now located, and containing 2.7 acres, more or less.

Being the same right-of-way acquired by Defense Plant Corporation from John F. Arano, Mrs. Vicelo Olsen, and Mrs. Margaret Rohrer by deed dated August 25, 1944, bearing file number 314622 and recorded in Book 376, page 62 of the records of Calcasieu Parish.

- d. (Referred to for identification purposes as Tract No. 20)
Over and across the Southeast Quarter of the Southeast Quarter (SE 1/4 of SE 1/4), Section 5, T 10 S, R 9 W, Southwestern District of Louisiana, being 100 feet wide, 50 feet on each side of the center line of said track, as now located, and containing approximately 3.5 acres.

Being the same right-of-way acquired by Defense Plant Corporation from the following named grantors by deeds dated, as follows bearing the following numbers and recorded in the following books and records of Calcasieu Parish, Louisiana:

<u>NAMES</u>	<u>DATE</u>	<u>FILE NO.</u>	<u>RECORDED</u>
Annabella Kearney	March 28, 1944	308846	Conveyance Book 370, page 154
Heater Irene Kearney Livingston	April 1, 1944	308847	Conveyance Book 370, page 155
Charles J. Wright	Nov. 4, 1944	318178	Conveyance Book 378, page 252
Bryan N. Wright	Nov. 25, 1944	318182	Conveyance Book 378, page 259
Carroll V. Wright	June 1, 1944	318180	Conveyance Book 378, page 256
Helen Wright Robertson	Nov. 14, 1944	318177	Conveyance Book 378, page 251
Florence Wright McClune	Nov. 4, 1944	318179	Conveyance Book 378, page 253
Maria Ann Kearney	March 28, 1944	308850	Conveyance Book 370, page 159
Mrs. Lillie Kearney Nelson	March 28, 1944	308848	Conveyance Book 370, page 157
Simon Bolivar Kearney	March 25, 1944	308845	Conveyance Book 370, page 153
Mabel K. Kearney, Guardian of the minors, George P. Kearney, Jr., Ruth E. Kearney, and June Patricia Kearney	Dec. 13, 1944	318181	Conveyance Book 378, page 257
Ruth Agnes K. Beasley	March 28, 1944	308849	Conveyance Book 370, page 158

e. (Referred to for identification purposes as Tract No. 21)

Over and across the W 1/3 of the NE 1/4 of Section 7, T 10 S, R 9 W, Southwestern District of Louisiana, being 100 feet wide, 50 feet on each side of the center line of said track, as now located, and containing 2.6 acres, more or less.

Being the same right-of-way acquired by Defense Plant Corporation from Mrs. Ona Ecker; Mrs. Marie Louise Fleig; Mrs. Augusta Kiplinger; Mrs. Tobiattha Brooks; S. S. Ecker; and Mrs. Margaret Trahan, by deed dated February 7, 1944, bearing file number 306065 and recorded in Book 364, page 504 of the records of Calcasieu Parish.

f. (Referred to for identification purposes as Tract No. 22)

Over and across the Southwest Quarter of Northeast Quarter (SW 1/4 of NE 1/4) of Section 7, T 10 S, R 9 W, Southwestern District of Louisiana being 100 feet wide, 50 feet on each side of the center line of said track, as now located, and containing approximately 2.5 acres.

Being the same right-of-way acquired by Defense Plant Corporation from the following named grantors by deed dated, bearing the following numbers and recorded in the following books and records of Calcasieu Parish, Louisiana:

<u>NAMES</u>	<u>DATE</u>	<u>FILE NO.</u>	<u>RECORDED</u>
Mrs. W. C. Kaufman and Mr. W. C. Kaufman, Jr.	Aug. 31, 1944	323545	Conveyance Book 389, Page 479
Mrs. Vera Perkins	Dec. 23, 1944	323560	Conveyance Book 384, Page 278
American National Bank of Beaumont, Texas	Dec. 15, 1944	323558	Conveyance Book 384, Page 277
Mrs. Anna F. Boudagos}	Dec. 16, 1944	323567	Conveyance Book 384, Page 275
Mrs. Katharine B. Matthews}	Dec. 14, 1944	323556	Conveyance Book 384, Page 274
& Mr. J. Adriance Boudagos)			

<u>NAME</u>	<u>DATE</u>	<u>FILE NO.</u>	<u>RECORDED</u>
Erwin J. LeBlanc	Dec. 15, 1944	323555	Conveyance Book 384, Page 273
Beryl W. Bordages	Dec. 15, 1944	323554	Conveyance Book 384, Page 272
Ether Kigauden	Dec. 15, 1944	323555	Conveyance Book 382, Page 587
J. E. Broussard	Dec. 15, 1944	323552	Conveyance Book 382, Page 586
Ers. Rosalie Irene Smith and Fred T. Smith	Feb. 28, 1945	323548	Conveyance Book 382, Page 584
Charles G. Hooks and Charles G. Hooks, Jr.	May 6, 1944	323551	Conveyance Book 382, Page 585
W. L. Green	March 29, 1945	523550	Conveyance Book 383, Page 533

g. (Referred to for identification purposes as Tract No. 23)
 Over and across the Northwest portion of the NW 1/4 of
 the SE 1/4 of Section 7, T 10 S, R 9 W, Southwestern
 District of Louisiana, being 100 feet wide, 50 feet on
 each side of the center line of said track, as now
 located, and containing approximately one (1) acre.

Being the same right-of-way acquired by Defense Plant
 Corporation from Eliza Guist (Guillette) by deed dated
 February 9, 1944, bearing file number 306202 and
 recorded in Book 368, page 260 of the records of
 Calcasieu Parish.

h. (Referred to for identification purposes as Tract No. 24)
 A right-of-way over and across the NE 1/4 of SW 1/4 of
 Section 7, T 10 S, R 9 W, Southwestern District of
 Louisiana. Being 100 feet wide, 50 feet on each side
 of the center line of said track, as now located, and
 containing two and five-tenths (2.5) acres, more or less.

Being the same right-of-way acquired by Defense Plant
 Corporation from Powell Lumber Company by deed dated
 February 3, 1944, bearing file number 305934 and
 recorded in Book 364, page 485 of the records of
 Calcasieu Parish.

4. A perpetual easement for the construction, use, operation,
 maintenance, repair and removal of a railroad track or tracks, a pipeline
 or pipelines, and electric power, telephone and telegraph lines, poles,
 towers, and guys, 100 feet in width over and across the following parcel of
 land, 50 feet on each side of a center line, said easement being more
 particularly described as follows:

a. (Referred to for identification purposes as Tract No. 25)
 Beginning at a point 891.4 feet West of the southeast
 corner of the SE 1/4 of the SW 1/4 of Section 7, T 10 S,
 R 9 W, Southwest Louisiana, thence North 15° 16' East
 1370 feet, more or less, to the north line of said SE 1/4
 of the SW 1/4 of Section 7, T 10 S, R 9 W.

Together with the perpetual right to clear and keep clear a
 strip of land 50 feet in width on the South and East side of said parcel.

The above described easement was acquired by the United States
 of America by a Declaration of Taking dated July 5, 1945, in the suit entitled

"UNITED STATES OF AMERICA vs Two Parcels of Land, Et Al", No. 856 of the Civil Docket of the United States Court for the Western District of Louisiana recorded in Conveyance Book 358 at page 105 and confirmed in a judgment in the same style and numbered case rendered May 12, 1944.

It is understood and agreed by and between the parties hereto that this conveyance transfers and assigns to the Purchaser any and all transferable rights, franchises, licenses and permits which the Vendor may have obtained and now holds from any governmental agencies or sub-divisions for the construction, maintenance, and operation of the railroad hereby conveyed over and across the rights of way hereinabove described and any and all navigable streams, public roads and highways traversing same.

The above described property, rights-of-way, servitudes, and easements are conveyed to the Purchaser subject to any and all reservations and exceptions which may appear from the Public records of Calcasieu Parish, State of Louisiana, including but not limited to the following (all references to "Stations" hereinafter are based on the plat, hereinafore referred to, prepared by F. Shutte' Sons, dated June 7, 1943, and revised March 22, 1946, and April 22, 1946):

1. The reservations for oil and gas leases and other easements and rights-of-way, as set out in the deeds from Cities Service Refining Corporation to Defense Plant Corporation, dated August 25, 1944, and recorded in Book 375, Page 285 and in Book 376, page 45 of the records of Calcasieu Parish.
2. A North and South public road 60 feet wide whose center line crosses the center line of the railway at Station 4 plus 48.
3. An East and West public road 60 feet wide whose center line crosses the center line of the railway at Station 55 plus 08.
4. A North and South public road 60 feet wide whose center line crosses the railway at Station 84 plus 48.
5. A 200 foot North and South Federal Access Highway whose center line crosses the railroad at Station 170 plus 95.4.
6. A 100 foot East and West State Highway whose center line crosses the railroad at Station 255 plus 32.

Vendor expressly reserves for itself, its successors, and assigns, the right to use jointly with the Purchaser the rights of way and easements herein described under Subdivision II of the description of the property conveyed hereunder for the purpose of using, operating, maintaining, repairing, relocating, and removing any and all existing facilities (other than those conveyed under Subdivision I of the description of the property conveyed herein)

which may be located in, on, or under the land covered by such right-of-way and easement, including specifically, but not limited to the following:

1. A 10" North and South gas line which crosses the center line of the railway at Station 3 plus 31, known as Defense Plant Corporation line.
2. A North and South 6" oil line which crosses the center of the railway at Station 4 plus 13, known as the Magnolia Petroleum Company line.
3. A 6" pipe line which crosses the center line of the railroad in a Northeast-Southwest direction at Station 84 plus 25.6, known as the Union Sulphur Company line.
4. A 20" gas line which crosses the center line of the railroad in a Northeast-Southwest direction at Station 85 plus 65, known as the Defense Plant Corporation line.
5. A 20" gas line which crosses the center line of the railroad in a Northeast-Southwest direction at Station 201 plus 58.6, known as the Defense Plant Corporation line.
6. An 8" oil line which crosses the center line of the railroad in an East and West direction at Station 201 plus 36 and is known as the Magnolia Petroleum Company line.
7. A 12" brine line which crosses the center line of the railroad in a Northeast-Southwest direction at Station 214 plus 23, known as the Kathleen Alkali Works line.
8. Various and sundry inter-plant pipe connections between the Butadiene Plant, and the Firestone Tire and Rubber Company Plant which crosses the railroad between Station 229 plus 00 and 265 plus 52.
9. A right-of-way for telephone lines which enter said railway right-of-way at Station 4 plus 60 and continues on said right-of-way to the end of the railroad at Station 265 plus 52. The said telephone line centers from 44 to 46 feet to the West or Right of railway center line and is operated by Southern Bell Telephone and Telegraph Company.
10. A transmission line right-of-way along the left Southeast side of the railway; said power line being located with the center transmission poles from forty (40) to fifty (50) feet to the left of railroad center line; said transmission line enters said railway right-of-way at Station 83 plus 81 and continues on said right-of-way to Station 255 plus 32 at the end of said railway line. This transmission line right-of-way is for Defense Plant Corporation power line between Cities Service Refining Company and the Defense Plant Corporation Magnesium Plant.

It is understood and agreed by and between the parties hereto that the rights herein reserved by Vendor shall be exercised in such manner as not to damage the property or materially interfere with the Purchaser's use of rights-of-way and easements hereby conveyed.

TO HAVE AND TO HOLD: The said property unto the said Purchaser and the Purchaser's successors and assigns forever.

This sale is made and accepted for the consideration and upon the terms and conditions as follows:

1. The price and sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars cash which the Purchaser has well and truly paid to the Vendor who acknowledges receipt thereof and grants full acquittance and discharge therefor.
2. Purchaser certifies as a condition of this sale that it is not purchasing the property herein conveyed for the purpose of reselling or leasing it and in no case will Purchaser resell or lease said property within three years from the date hereof without first obtaining the written authorization of the War Assets Administrator.
3. The Purchaser certifies that it has begun common carrier operation of said trackage and has established said trackage within the switching limits of a new station named West Lake Charles; has established line haul rates from this new station which are the same as the line haul rates to and from Lake Charles, Louisiana, after filing of tariffs, and notices in the customary manner after obtaining the required approvals and authorization from the governmental agencies concerned and the concurrence of other participating railroads.
4. That Purchaser agrees that it has obtained all of the necessary permits and authorizations for the running of said railroad.
5. The Purchaser will assume its proportionate share of the taxes from the date of this transfer.
6. The parties hereto expressly dispense with the production of the usual and customary mortgage certificate.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed in sextuple this 21st day of May 1947, in the presence of the undersigned competent witnesses.

UNITED STATES OF AMERICA AND

RECONSTRUCTION FINANCE CORPORATION
Acting by and through
War Assets Administrator
By Carroll B. Clark
Deputy Regional Director

WITNESSES:

Richard D. Smith

C. Mandy Holliday

TEXAS AND NEW ORLEANS RAILROAD COMPANY
By Bill James
Vice-President

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
By Walter J. Jones
Executive General Agent

STATE OF LOUISIANA

PARISH OF ORLEANS

On this 21st day of May 1947, before me, a Notary Public in and for the said State and Parish, personally appeared Cannon D. Clark, who being duly sworn acknowledges that he is the Deputy Regional Director, Office of Real Property Disposal, War Assets Administration, and that pursuant to a Delegation of Authority of the War Assets Administrator executed on November 22, 1946, and the provisions of the Surplus Property Act of 1944, as amended, he has been duly designated, authorized, and empowered by the War Assets Administrator to execute the within instrument on behalf of said Administrator; he further acknowledges that he executed the said instrument in behalf of and as and for the voluntary act and deed of said Administrator, acting in behalf of the United States of America and the Reconstruction Finance Corporation; and that he executed the same in the capacity therein stated and for the purposes and considerations therein expressed.

Given under my hand and seal this 21st day of May 1947.


Notary Public
Notary Public

STATE OF LOUISIANA

PARISH OF ORLEANS

Before me, the undersigned Notary Public in and for the said State and Parish, personally came and appeared R. W. Barnes who declared and acknowledged that he signed, executed, and delivered the foregoing instrument for and on behalf of the TEXAS AND NEW ORLEANS RAILROAD COMPANY, a Texas corporation, in his capacity as Vice President of said corporation, being duly authorized, as the free act and deed of said corporation.

Given under my hand and seal this 21st day of May 1947.


Notary Public
Notary Public

STATE OF LOUISIANA

PARISH OF ORLEANS

Before me, the undersigned Notary Public in and for the said State and Parish, personally came and appeared W. D. Burch, who declared and acknowledged that he signed, executed, and delivered the foregoing instrument for and on behalf of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri Corporation, in his capacity as General Agent of said corporation, being duly authorized, as the free act and deed of said corporation.

Given under my hand and seal this 21st day of May 1947.

Colin W. Sims
Notary Public
Notary Public

United States documentary stamps in the sum of \$275.00, duly defaced and cancelled, are affixed to the original counterpart hereof filed for record in the Office of the Clerk of Court and Ex-Officio Register of Conveyances for the Parish of Calcasieu, Louisiana.

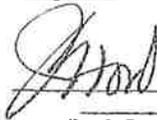
CERTIFICATE OF ~~Assistant~~ SECRETARY
REAL PROPERTY REVIEW BOARD
WAR ASSETS ADMINISTRATION

I, the undersigned J. Q. Ford,
~~Assistant~~ Secretary, Real Property Review Board, War Assets
Administration, in my official capacity as such ~~Assistant~~
Secretary, and duly authorized in the DELEGATION OF AUTHORITY INCIDENT
TO THE CARE, HANDLING AND CONVEYANCING dated November 22, 1946, to
make the following certification, do hereby certify:

1. That Carson D. Clark is the
~~Deputy Regional Director, Office Real Property~~ War Assets Administration,
~~New Orleans, Louisiana~~, duly appointed,
authorized and acting in such capacity at the time of the execution of
the attached instrument.

2. That the attached DELEGATION OF AUTHORITY INCIDENT TO THE
CARE, HANDLING AND CONVEYANCING is a true and correct copy of the
original of said DELEGATION OF AUTHORITY, dated November 22, 1946.

Given under my hand this Eight day of May, 1947.



Secretary
Real Property Review Board
War Assets Administration

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WAR ASSETS ADMINISTRATION

(NOTICE)

DELEGATION OF AUTHORITY NO.

DELEGATION OF AUTHORITY INCIDENT TO THE CARE, HANDLING, AND CONVEYANCING

The Deputy Administrator, Office of Real Property Disposal, each Assistant Deputy Administrator, Office of Real Property Disposal, War Assets Administration, the Zone Administrator and Zone Director, Office of Real Property Disposal, in each and every War Assets Administration Zone Office, and the Regional Director and Deputy Regional Director for Real Property Disposal, in each and every War Assets Administration Regional Office, excepting the Fort Worth Regional Office, are hereby authorized, individually (1) to execute, acknowledge and deliver any deed, lease, permit, contract, receipt, bill of sale, or other instruments in writing in connection with the care, handling and disposal of surplus real property, or personal property assigned for disposition with real property, located within the United States, its territories and possessions, (2) to accept any notes, bonds, mortgages, deeds of trust or other security instruments taken as consideration in whole or in part for the disposition of such surplus real or personal property, and to do all acts necessary or proper to release and discharge any such instrument or any lien created by such instrument or otherwise created, and (3) to do or perform any other act necessary to effect the transfer of title to any such surplus real or personal property located as above provided; all pursuant to the provisions of the Surplus Property Act of 1944, 58 Stat. 765 (50 U.S.C. App. Supp. 1611), as amended by Public Law 181, 79th Congress; Executive Order 9689 (11 F.R. 1265); Surplus Property Administration Regulation No. 1, as amended (10 F.R. 14064; 11 F.R. 2602; 11 F.R. 3035); and Surplus Property Administration General Amendment of January 5, 1946 (11 F.R. 408).

R. G. Rhett, the Secretary, and J. G. Ford, the Assistant Secretary, of the Real Property Review Board, War Assets Administration, are hereby authorized, individually, to certify true copies of this Delegation and provide such further certification as may be necessary to effectuate the intent of this Delegation in form for recording in any jurisdiction, as may be required.

This Delegation shall be effective as of the opening of business on November 23, 1946.

This authority confirms such authorities previously granted under dates of May 17, 1946; May 29, 1946; July 30, 1946; September 16, 1946 and October 31, 1946, as do not conflict with the provisions of this delegation.

November 22, 1946


ROBERT M. LITTLEJOHN
Administrator

47-3380

RESOLUTION ADOPTED AT REGULAR MEETING OF THE
BOARD OF DIRECTORS OF TEXAS AND NEW ORLEANS
RAILROAD COMPANY, HELD AT HOUSTON, TEXAS ON
MAY 12, 1947.

On motion duly made and seconded, the following resolution was unanimously adopted:

WHEREAS, the Chairman has advised of completion of all details in connection with the contemplated purchase by this Company, jointly with The Kansas City Southern Railway Company, from United States of America and Reconstruction Finance Corporation, of the spur line of track, together with certain interchange and storage tracks, including turnout connections, all of said trackage aggregating a total length of approximately 6.42 miles, together with rights-of-way, franchises, licenses and permits in connection therewith, located in Calcasieu Parish, Louisiana, more particularly described as follows:

Main industrial lead track extending approximately 4.83 miles in a general southerly and southwesterly direction beginning at a point of connection with Kansas City Southern Railway Magnesium Plant track at engineer station 0,400, said point being near northeast corner of southeast quarter of Section 33, Township 9 South, Range 9 West in Calcasieu Parish, Louisiana, except that first 200 feet of track owned by K.O.S. Railway is not included, and ending at engineer station 254,485 at north line of Public Highway located along south line of Section 18, Township 10 South, Range 9 West in Calcasieu Parish, Louisiana; two storage tracks, 2,996.5 feet and 2,627.8 feet in length, located near point of beginning of main lead at place commonly known as "Rosebluff Yard"; one storage track, 1,874.4 feet in length, near end of main lead; turnout connections for three tracks, approximating a total of 727 feet of track, diverging from said main lead track and for two tracks, approximating a total of 407 feet of track, diverging from storage track, all situated within said Section 18, and lying within main lead right-of-way of normal width of 50 feet each side of center line of main lead track; drainage structures under trackage and roads, consisting of various diameter concrete pipes, box culverts, timber trestling and steel girder span; highway crossing signs, private road crossing and public road crossing improvements; and other improvements of any nature pertaining to construction or operation of all trackage described; total mileage of trackage described herein above amounting to 4.788 of main lead track and 1.635 miles of other track, it being understood that turnout connection to so-called Maplewood industry spur is not included in trackage involved. All "Stations" herein referred to are delineated on a plat of survey prepared by F. Shutts' Sons, dated June 7, 1943, revised March 22, 1946, and April 22, 1946.

NOW, THEREFORE, BE IT RESOLVED, That this Company complete the purchase of said property for the price and sum of Two Hundred Fifty Thousand and no/100 (\$250,000.00) Dollars cash, to be paid jointly by it and The Kansas City Southern Railway Company, in the proportions of one-half each.

BE IT FURTHER RESOLVED, That E. A. Craft, Executive Vice-President, and R. W. Barnes, Vice President, be and each of them is hereby authorized and empowered to execute, on behalf of this Company, the necessary deed containing such stipulations, terms and conditions as in his discretion he may deem fit and proper, to execute any and all other instruments, and to do any and all other things whatsoever which he may consider necessary to carry out the purposes of this resolution.

I, G. B. Herbert, hereby certify that I am Secretary of the Texas and New Orleans Railroad Company; that a regular meeting of the Board of Directors of said Company was held at Houston, Texas on May 12th, 1947; that said meeting was duly called and held pursuant to all legal requirements, and that a sufficient number of Directors were present to constitute a quorum; that said meeting was duly held in all respects, as provided for under the By-Laws of the Company, and that the foregoing is a true and complete copy of the resolution unanimously adopted at said meeting.

Dated at Houston, Texas, this 14th day of May, 1947.



Secretary
Texas and New Orleans Railroad Company

RESOLUTION ADOPTED AT THE REGULAR ANNUAL MEETING
OF THE BOARD OF DIRECTORS OF THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, HELD AT KANSAS CITY,
MISSOURI, ON MAY 27, 1947.

* * * * *

On motion duly made and seconded, the following
resolution was unanimously adopted:

WHEREAS, the Chairman has advised of the comple-
tion of the purchase by this Company, jointly with Texas &
New Orleans Railroad Company, from the United States of
America and Reconstruction Finance Corporation, of the spur
line of track, together with certain interchange and storage
tracks, including turnout connections, all of said trackage
aggregating a total length of approximately 6.42 miles, to-
gether with rights of way, franchises, licenses and permits
in connection therewith, located in Calcasieu Parish,
Louisiana, more particularly described as follows:

Main industrial lead track extending approximately
4.83 miles in a general southerly and southwesterly
direction beginning at point of connection with
Kansas City Southern Railway Magnesium Plant track
at engineer station 0/00, said point being near
northeast corner of southeast quarter of Section 33,
Township 9 South, Range 9 West in Calcasieu Parish,
Louisiana, except that first 200 feet of track owned
by K.C.S. Railway is not included, and ending at
engineer station 254/85 at north line of Public High-
way located along south line of Section 18, Township
10 South, Range 9 West in Calcasieu Parish, Louisiana;
two storage tracks, 2,996.5 feet and 2,627.6 feet in
length, located near point of beginning of main lead
at place commonly known as "Rosebluff Yard"; one
storage track, 1,874.4 feet in length, near end of
main lead; turnout connections for three tracks,
approximating a total of 727 feet of track, diverging
from said main lead track and for two tracks,
approximating a total of 407 feet of track, diverging
from storage track, all situated within said Section
18, and lying within main lead right of way of normal
width of 50 feet each side of center line of main
lead track; drainage structures under trackage and
roads, consisting of various diameter concrete pipes;
box culverts, timber trestling and steel girder span;
highway crossing signs, private road crossing and
public road crossing improvements; and other improve-
ments of any nature pertaining to construction or

operation of all trackage described; total mileage of trackage described hereinabove amounting to 4.788 of main lead track and 1.635 miles of other track, it being understood that turnout connection to so-called Maplewood industry spur is not included in trackage involved. All "Stations" herein referred to are delineated on a plat of survey prepared by F. Shutt's Sons, dated June 7, 1943, revised March 22, 1946, and April 22, 1946.

NOW, THEREFORE, BE IT RESOLVED, That this Company does hereby ratify and confirm the purchase of said property which was made for the price and sum of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars cash, paid jointly by it and Texas & New Orleans Railroad Company, in the proportions of one half each.

BE IT FURTHER RESOLVED, That the authority and power of W. D. Burch, General Agent, in executing this deed on behalf of this Company, and in executing any and all other instruments, and doing all other things whatsoever as in his discretion he considered necessary to the completion of this transaction, is hereby recognized, and his actions in this respect are ratified and confirmed.

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I, G. H. BACON, hereby certify that I am Assistant Secretary of The Kansas City Southern Railway Company; that the regular annual meeting of the Board of Directors of said Company was held at Kansas City, Missouri, on May 27, 1947; that said meeting was duly called and held pursuant to all legal requirements, and that a sufficient number of Directors were present to constitute a quorum; that said meeting was duly held in all respects, as provided for under the By-Laws of the Company, and that the foregoing is a true and complete copy of the resolution unanimously adopted at said meeting.

Dated at Kansas City, Missouri, this 27th day of May, 1947.


Assistant Secretary
The Kansas City Southern Railway Company