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ENTERED  
Office of Proceedings  
May 14, 2013  
Part of  
Public Record

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May 14, 2013

**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 hereby tenders, via e-filing, its “Reply To CITGO Petroleum Corporation’s Petition To Intervene,” offered in response to CITGO’s filing of April 24, 2013. 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](mailto:wmullins@bakerandmiller.com).

Sincerely,



William A. Mullins

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

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

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**REPLY OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY TO CITGO  
PETROLEUM CORPORATION'S PETITION TO INTERVENE**

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

**May 14, 2013**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**BNSF RAILWAY COMPANY  
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**REPLY OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY TO CITGO  
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On April 24, 2013, CITGO Petroleum Corporation ("CITGO") filed a Petition to Intervene ("Petition") in the above-captioned proceeding in support of BNSF Railway Company's ("BNSF's") terminal trackage rights application to operate over the Rosebluff Industrial Lead, a track that is owned equally by The Kansas City Southern Railway Company ("KCS") and Union Pacific Railroad Company ("UP"). KCS hereby replies to the Petition.

KCS has no objection to CITGO's participation in this proceeding if the matter becomes ripe for consideration on the merits. However, BNSF should first be required to negotiate with KCS and UP, and, if necessary, submit the matter to arbitration as outlined in Decision No. 63 in this docket sixteen years ago. To date, BNSF has neither sought to negotiate with KCS, nor proposed terms for BNSF's use of KCS' property. Moreover, BNSF has not outlined how it proposes to safely add a third carrier to an already crowded and limited facility that serves dozens of shippers without adversely impacting existing service to those shippers.

While KCS does not object to CITGO's participation if this proceeding ever becomes ripe for consideration, there were several factual misstatements in the Petition that need correction. Specifically –

- BNSF incorrectly states that UP is unilaterally preventing delivery of more than 30 cars to CITGO;
- BNSF incorrectly states that it interchanges traffic for CITGO with UP in Rosebluff Yard; and
- BNSF incorrectly states that only UP can directly serve CITGO, when, in fact, KCS directly delivered 6 unit trains' worth of cars to CITGO between October 2012 and January 2013, and CITGO characterized KCS' service as excellent.

Further details on these issues follow below.

The Petition erroneously states that "UP has restricted service to the CITGO refinery to a maximum of thirty railcars per day." In making this statement, CITGO leaves the impression that it is immediately ready to receive 60-car unit trains. Such is not the case. CITGO cannot receive such shipments today, and most likely won't be able to in the near future.

For safety and capacity reasons, the agreement between UP, KCS and CITGO governing the track in CITGO's facility limits CITGO to receiving 30 cars per day. See exhibit to UP's May 3, 2013 Reply (UP/SP-411 at 2). Prior to last Fall, CITGO's track was limited to receiving 24 cars per day, but after careful review of CITGO's rail facilities, KCS, UP and CITGO agreed to increase the per day receiving capacity to 30 cars. While KCS anticipates that the parties will review that limit as CITGO expands its track capacity, CITGO does not currently have adequate track capacity for any party to safely and efficiently deliver a 60-car unit train into the refinery. The Board should not be under a false impression that urgent action is needed in order for CITGO to obtain what is allegedly better and more competitive service through 60 car unit train service when such service is not even physically available.

A second misstatement in CITGO's Petition is the assertion that "BNSF can only serve the [CITGO] facility indirectly by delivering rail cars to the Rosebluff Yard." While BNSF currently serves CITGO via reciprocal switch, BNSF does not deliver rail cars to Rosebluff Yard. To KCS' knowledge, BNSF has never operated on the joint facility track to Rosebluff Yard. KCS understands that BNSF delivers CITGO traffic to UP at UP's Lake Charles North Yard, across the Calcasieu River. UP then brings the traffic to CITGO via Rosebluff Yard.

Rosebluff Yard and the track connecting to it are owned jointly and equally by KCS and UP. As the Board said in Decision No. 63, BNSF should negotiate with KCS and UP if it seeks to operate on the joint facilities in the Lake Charles area. BNSF so far has refused to negotiate with KCS, instead seeking government-forced access via terminal trackage rights.

Finally, the statement in CITGO's Petition that "UP is currently the only railroad which directly provides service to CITGO" is wrong. KCS has recently delivered cars to CITGO, and stands ready to do so again. KCS handled six unit trains of approximately 60 cars each – broken into smaller blocks of cars at the time of delivery – for CITGO between October 2012 and January 2013. KCS delivered all of these carloads to CITGO directly,<sup>1</sup> in keeping with the

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<sup>1</sup> Under Article I, paragraph E of a 1981 agreement between Southern Pacific Transportation Company ("SP") and KCS which governs the joint facility, "[i]t 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." As noted, the daily limit on deliveries to CITGO was recently raised from 24 cars to 30 cars, allowing KCS to directly serve CITGO with blocks of up to 30 cars. Although UP typically switches the territory where CITGO is located, KCS can serve CITGO directly with blocks of 25-30 cars per day.

limitations on CITGO's track capacity—limitations that CITGO itself agreed to. CITGO characterized KCS's service to CITGO as excellent.<sup>2</sup>

As set forth in its March 19th reply, KCS worked with the Stillwater Central Railroad ("SLWC") and SLWC's affiliate, the South Kansas & Oklahoma Railroad ("SKOL"), to route unit trains originating at Stroud, OK, to CITGO's refinery. This KCS routing was in competition with routings provided by UP and BNSF, as well as with other routings involving other UP and BNSF origins. Indeed, to KCS's knowledge, CITGO has never complained that KCS' service was inadequate or non-competitive. In fact, KCS understands that it wasn't until KCS started providing an effective alternative to UP and BNSF's service that BNSF lowered its rates and began to offer unit train service from Stroud to CITGO. CITGO remains a valued customer of KCS, and KCS stands ready to serve CITGO again. It is not correct that only UP can directly serve CITGO.

In conclusion, KCS has no objection to CITGO's participation in this proceeding, if the proceeding ever needs to move forward on the merits. However, as the Board is aware, BNSF has not followed the first two steps outlined in Decision No. 63 (negotiation and then arbitration) before filing its application in this subdocket. As such, it is premature at this time for the Board to establish a procedural schedule for resolving the merits of BNSF's terminal trackage rights application. Factual misstatements by BNSF or others that may leave the impression that the Board needs to act quickly to allow 60 car unit trains are not accurate or

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<sup>2</sup> CITGO's Petition does not say that BNSF's routes and service (which is via reciprocal switch) were or are inadequate or that BNSF cannot today compete. Rather, CITGO supports BNSF direct service as "better serv[ing] the existing and future needs of the CITGO refinery for rail shipments of crude oil." CITGO Petition at 3. Of course, a shipper's desire for "better service" is not the standard for granting, or even beginning to process, a terminal trackage rights application. Plus, BNSF can and does compete for CITGO traffic without the need for direct service via forced terminal trackage rights.

persuasive. Today, CITGO has the option receiving up to 30 cars per day using either UP, KCS, or BNSF routings, with BNSF accessing CITGO via reciprocal switch. Accordingly, there is no need to begin a terminal trackage rights proceeding or for the Board to rule on CITGO's Petition.

Respectfully submitted,

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Attorneys for The Kansas City Southern  
Railway Company

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Reply Of The Kansas City Southern Railway Company To CITGO Petroleum Corporation's Petition To Intervene," was served by first-class mail, postage prepaid, or by a more expeditious manner, this 14<sup>th</sup> day of May, 2013, on counsel for BNSF Railway Company, Union Pacific Railroad Company, and any other parties of record.



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