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## 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: STB Docket No. EP 715, *Rate Regulation Reforms*

Dear Ms. Brown:

In accordance with the procedures set forth in the Board's Decision served on July 25, 2012, please accept for consideration the attached Rebuttal Comments Of The Kansas City Southern Railway Company. If there are any questions concerning this 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

Enclosure

cc: Warren K. Erdman  
W. James Wochner

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. EP 715**

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**RATE REGULATION REFORMS**

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**REBUTTAL COMMENTS OF  
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

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

**Dated: January 7, 2013**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. EP 715**

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**RATE REGULATION REFORMS**

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**REBUTTAL COMMENTS OF  
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

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**Overview**

In a Notice of Proposed Rulemaking (“NPR”) served on July 25, 2012, the Surface Transportation Board (“STB” or “Board”) proposed to modify some of the current rules and processes that apply in railroad rate reasonableness proceedings. The Kansas City Southern Railway Company (“KCS”) submitted Opening Comments in this proceeding on October 23, 2012, and now respectfully submits its Rebuttal Comments in accordance with the NPR.

At the opening comments phase of the proceeding, KCS explained that, while some of the proposals set forth in the Board’s NPR may eventually prove to be warranted, the Board should resist any modifications to its rate regulations until the agency has more experience applying its existing Simplified Stand-alone Cost (“SSAC”) and Three Benchmark (“3B”) methodologies and corresponding regulations. After gaining that experience, then it may, in KCS’s view, be appropriate for the Board to implement some of the proposed changes advocated in this NPR. Such a measured approach is legally sustainable and does not carry the substantial legal and financial risks inherent in other proposals to deal with shipper concerns, such as those

proposals advocating mandatory switching.<sup>1</sup> Nothing in the opening comments or in the reply comments filed by others has caused KCS to change its view. Rather, KCS files these Rebuttal Comments to address comments by others which misconstrue KCS's position on the issues in this proceeding.

### **Response to Reply Comments**

A handful of shipper groups mentioned KCS's Opening Comments in their respective reply comment filings. In so doing, these commenters' references to KCS's Opening Comments indicate misunderstandings of KCS's position that need to be clarified.

To set the record straight, KCS has not supported adoption of any of the proposed changes at this time. Instead, KCS has argued that this proceeding should yield a single result: the Board should suspend further activity on its proposed rules pending gaining further experience with the so-called small rate case processes. At this time, KCS does not endorse a selective adoption of some of the proposed rules changes and/or the rejection of others, as some shipper groups seek to imply.

The Chlorine Institute ("CI"), in addressing (and opposing) the perceived "linkage" between an increase in SSAC case relief cap and the use of full replacement cost ("RPI") inputs, cited KCS's opening comments as supportive of CI's position. See CI Reply Comments at 2. To be clear, KCS individually has not advocated for or against the use of RPI in a SSAC case, nor has it at this time advocated for an increase in existing SSAC relief caps. Instead, KCS used the

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<sup>1</sup> In short, in its Opening Comments, KCS noted that "because of the numerous changes made to the rate complaint rules and procedures over the most recent years, the Board should allow time for those most recent changes to be tested and observed, rather than simply discarding them for vastly different, untested proposals" (KCS Opening Comments at 3). KCS also stated that the Board's resources are best committed to rate complaint process reforms, rather than trying to make wholesale and fundamental changes in the railroad marketplace, such as those changes under consideration in Petition for Rulemaking To Adopt Revised Competitive Switching Rules, EP 711 (STB served July 25, 2012).

undisputed fact that RPI would increase the cost and complexity of a SSAC case as illustrative of why the Board should not undertake fundamental changes in its SSAC approach at this time without first gaining experience in handling such cases to conclusion. In fact, KCS left open the possibility that the use of RPI may in fact be appropriate in the future following additional agency experience with SSAC cases. See KCS Opening Comments at 9-10 (“KCS does not believe the Board has enough experience [with SSAC] cases to justify lifting the rate-relief cap at this time, [and] cannot, without further analysis, support the . . . proposed change to the RPI simplification component . . . KCS may support such changes in the future if, after the completion of several SSAC cases, it is clear that the RPI component the Board should be revised”).<sup>2</sup>

Similarly, Consumers United for Rail Equity (“CURE”) cited to KCS’s Opening Comments for a purpose that KCS did not intend and does not endorse. Specifically, CURE quoted a passage taken from KCS’s opening comments (stating KCS’s general preference for less complex and less costly rate reasonableness processes) as supporting the proposition that the Board should jettison SAC-based rate relief methodologies altogether in favor of a “revenue adequacy” constraint. See CURE Reply Comments at 4-5, 5 n. 8. To be clear, KCS does not support abandoning the SAC methodology, nor, for that matter, does KCS support general rule changes that depart at this time from any element of the existing rate relief processes.

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<sup>2</sup> The National Grain and Feed Association (“NGFA”) weighed in with an argument virtually identical to CI’s on the “linkage” issue, arguing that the use of RPI in SSAC cases would insert additional (and unnecessary) cost and complexity into the process. In so doing, NGFA applies the same mistaken implication as CI has raised that, since the use of RPI would add to SSAC case complexity, KCS must oppose this specific element of the Board’s proposal. As the above-quoted passage from KCS’s opening comments makes clear, KCS has not ruled out the possible use of RPI in SSAC cases in the future, although it is undisputed that allowing RPI would add to the cost and complexity of a SSAC case.

Also, CURE attempts to depict a schism between individual railroad commenters on the use of “cross-over traffic” in Full-SAC cases, and, in so doing, to place KCS in one of the two purported camps on the issue. See *id.* at 10, n.11 (stating that KCS “does not appear to agree with BNSF and UP,” because KCS did not argue that cross-over traffic should be eliminated from Full-SAC cases). More accurately, KCS’s Opening Comments acknowledge that eliminating cross-over traffic could reduce the complexity and cost of litigating a Full-SAC case. But, ultimately (and contrary to CURE’s depiction), KCS took pains to state that it had “no specific comment on the Board’s proposal to curtail the use of cross-over traffic in Full-SAC cases.” KCS Comments at 11.

Finally, the consortium of shipper interests identifying itself as the “Coal Shippers”<sup>3</sup> included discussion of KCS’s Opening Comments that also warrants some clarification. The Coal Shippers Reply Comments could be read to suggest an ambiguity in KCS’s position on the RPI issue<sup>4</sup> and on the use of cross-over traffic.<sup>5</sup> Again, KCS takes no specific position on the

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<sup>3</sup> Western Coal Traffic League, Concerned Captive Coal Shippers, American Public Power Association, Edison Electric Institute, National Rural Electric Cooperative Association, Western Fuels Association, Inc., and Basin Electric Power Cooperative, Inc.

<sup>4</sup> The Coal shippers state in the main body of their Reply Comments that all of the railroad commenters, “with the exception of KCS, support the Board’s proposal requiring the use of . . . RPI calculations in [SSAC] cases.” Coal Shippers Reply Comments at 22. This passage by itself could lead one to conclude that KCS has taken an issue-specific position on RPI calculations in SSAC cases. The corresponding footnote 71, however, more accurately states that “KCS opposes any changes in the current [SSAC] and [3B] case procedures at this time” (because KCS believes that the Board’s proposals are premature).

<sup>5</sup> KCS believes that the Coal Shippers intended to depict KCS’s position on the cross-over issue accurately in their Reply Comments. But the passage at page 6 of the Coal Shippers Reply comments regarding the allegedly “tepid” response of the railroad commenters other than KCS to the Board’s cross-over traffic proposal, if not read in the context of the corresponding footnote 9 carrying over to page 7, could lead to the misunderstanding that KCS either enthusiastically supports the Board’s cross-over traffic proposal or opposes it outright.

issue of the use of cross-over traffic. KCS believes that the Board is acting prematurely to propose any changes to its small case rate regulation processes at this time.

### **Conclusion**

KCS has urged the Board to adhere to the measured, progressive approach to railroad rate regulation that it has demonstrated in the past. See, for example, discussion in KCS's Opening Comments at 7-8. As KCS's Opening Comments convey, the Board should gain more experience under the most recent changes it has made in the SSAC and 3B methodologies before moving forward on any of the proposed changes. While in its Opening Comments KCS shared its general impression on some the Board's proposals, KCS's Opening Comments should not be construed as a piecemeal endorsement of, or opposition to, any specific proposed change.

As KCS explained in its Opening Comments, if the Board's experience shows that the existing rules and procedures are inadequate, then the Board can, at that time, address any deficiencies, including consideration of some of the proposals in the NPR – some of which KCS may fully support. In the meantime, a case-by-case approach is the best means to address the shippers' concerns regarding the costs and complexities of the various rate complaint methodologies. In doing so, the Board can best address the concerns of the shippers without adopting fundamental changes to the industry as a whole, such as those proposed in EP 711, which, if adopted, could lead to unintended consequences.

Respectfully submitted,



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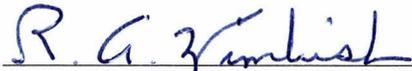
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Attorneys for The Kansas City Southern  
Railway Company

Dated: January 7, 2013

**CERTIFICATE OF SERVICE**

This is to certify that on this 7th day of January, 2013, I caused the foregoing "Rebuttal Comments of The Kansas City Southern Railway Company" in this Docket No. EP 715 proceeding to be served upon all known parties of record by first class mail, postage prepaid, or by more expeditious means.

  
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Robert A. Wimbish