

BAKER & MILLER PLLC

237711

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

ENTERED
Office of Proceedings
February 9, 2015
Part of
Public Record

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

February 9, 2015

VIA E-FILING

Cynthia T. Brown, Chief
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 – Kansas
City Southern Railway Company and Union Pacific Railroad
Company

EXPEDITED CONSIDERATION REQUESTED

Dear Ms. Brown:

Enclosed is The Kansas City Southern Railway Company's ("KCSR") Motion to Compel Responses to KCSR's First Set Of Discovery Requests To CITGO. KCSR is filing two versions: a Public version that redacts confidential information and a Confidential version. The Confidential version is being filed under seal in accordance with the Protective Order issued on December 18, 2014. KCSR also requests expeditious consideration of the issues addressed herein. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com.

Sincerely,


William A. Mullins

Enclosure

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
MOTION TO COMPEL RESPONSES TO THE KANSAS CITY SOUTHERN RAILWAY
COMPANY'S FIRST SET OF DISCOVERY REQUESTS TO CITGO**

EXPEDITED CONSIDERATION REQUESTED

**W. James Wochner
David C. Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Telephone: (816) 983-1324
Facsimile: (816) 983-1227**

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849**

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

February 9, 2015

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SURFACE TRANSPORTATION BOARD**

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MOTION TO COMPEL RESPONSES TO THE KANSAS CITY SOUTHERN RAILWAY
COMPANY'S FIRST SET OF DISCOVERY REQUESTS TO CITGO**

EXPEDITED CONSIDERATION REQUESTED

Pursuant to 49 CFR § 1114.31(a), The Kansas City Southern Railway Company (“KCSR”) hereby moves for an order compelling CITGO to answer certain discovery requests that were contained in KCSR’s First Set Of Discovery Requests (“KCSR 1st Requests”) directed to CITGO, served on January 15, 2015. This Motion to Compel (“Motion”) is necessary because CITGO has either refused or only partially responded to the majority of the discovery requests propounded in KCSR 1st Requests. Although CITGO is not the applicant in the terminal trackage rights application, BNSF’s terminal trackage rights application is for the purpose of providing service to CITGO, and, according to BNSF, its terminal trackage rights are necessary “[f]or CITGO to have the competitive option that the Board deemed critical.” See BNSF Opening Statement and Evidence at 17. To test this claim, KCSR served discovery against CITGO (who is a party to the proceeding and for which discovery may be served against – 49 CFR §§ 1114.26-1114.30). As a party to the proceeding and the only shipper supporting BNSF’s claim, clearly CITGO most likely has documents that are related to BNSF’s claims and the

statutory elements BNSF must establish in its terminal trackage rights application.

Unfortunately, CITGO has refused, in large part, to provide those documents. Instead, CITGO offers a multitude of twelve general objections for refusing to respond to KCSR 1st Requests (see Appendix A attaching KCSR's 1st Requests and CITGO's written discovery responses).

The documents KCSR seeks go to the heart of the statutory standards applicable to granting a terminal trackage rights application and CITGO should not be allowed to refuse to produce those documents simply because it believes such documents are not relevant or on the basis of other general objections. Accordingly, KCS requests that the Board expeditiously order CITGO to produce all non-privileged documents.

ARGUMENT

In Board proceedings, KCSR is entitled to discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a)(1). Relevance is a very broad standard. Any document that "could" or "might" affect the outcome of BNSF's terminal trackage rights application is considered relevant and CITGO should be required to produce them. Waterloo Ry.—Adverse Aban.—Lines of Bangor and Aroostook R.R. and Van Buren Bridge Co. in Aroostook Cnty., Me., AB 124 (Sub-No. 2), et al. (STB served Nov. 14, 2003)("The requirement of relevance means that the information might be able to affect the outcome of a proceeding.") Further, it "is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 49 C.F.R. § 1114.21(a)(2). See also Ballard Term. R.R. – Acquisition & Operation Exemption – Woodinville Subdivision, FD 35731, slip op. at 3 (STB served Aug. 22, 2013) and Seminole Electric Coop., Inc. v. CSX Transport, Inc., FD 42110, at 2 (STB served Feb. 17, 2009).

Notwithstanding this broad definition of relevance, CITGO has objected to producing information necessary for the parties and the Board to evaluate the statutory elements that must be met for BNSF's application to be granted, especially with respect to the public interest standard and whether BNSF's operations would interfere with the operations of UP and KCSR, which are the two key elements of 49 U.S.C. §11102(a). CITGO has produced some information concerning its capacity to load, store, switch, and unload railcars, but the information CITGO produced has generated more questions than answers. Further, the information provided omits answers to several interrogatories and document requests that go to the crux of the public interest standard, *i.e.* whether BNSF is already a successful competitor for CITGO's business without the need for direct terminal trackage rights.

CITGO has refused to produce any documents or respond to any interrogatories relevant to the public interest standard. For example, CITGO refuses, on the basis of relevance, to produce information regarding whether or not BNSF is already a successful competitor for CITGO's business and is doing so without the need for direct, operationally intrusive trackage rights. Yet documents related to that topic go precisely to the issue of whether the public interest requires the Board to grant BNSF's application in order to implement the Lake Charles Condition that was imposed in the UP/SP proceeding. A number of KCSR's requests will elicit materials that go directly to this issue (and others) and which CITGO refuses to provide on the basis of a general "relevance" objection. Consistent with established precedent, KCSR is entitled to all relevant documents (which, as previously noted, means the document "could" or "might" affect the outcome of the proceeding) and CITGO should be required to provide them.

While KCSR propounded 18 discovery requests, CITGO only provided an answer to at most seven (including partial responses) of KCSR 1st Requests. In light of the importance of the

requested information, CITGO's general objections are insufficient grounds for refusing to provide the requested information. Further, as explained herein, CITGO's specific objections to seven of KCSR 1st Requests on the grounds that the requested information is neither relevant nor likely to lead to the discovery of admissible evidence related to the subject matter of BNSF's terminal trackage rights application should be overruled. Accordingly, KCSR asks the Board to order CITGO to promptly respond to the following KCSR 1st Requests: Interrogatories 3 and 4 and Document Requests 1, 2, 4, 5, 6, 8, and 9.

I. THE INTERROGATORIES AND DOCUMENT REQUESTS SPECIFIED BELOW ARE RELEVANT AND RESPONSES ARE NECESSARY FOR KCSR TO PREPARE EVIDENCE IN RESPONSE TO BNSF'S TERMINAL TRACKAGE RIGHTS APPLICATION.

CITGO should be compelled to respond to Interrogatories 3 and 4 and Document Requests 1, 2, 4, 5, 6, 8, and 9 because the requested information is directly relevant to the Board's decision in this proceeding. These discovery requests are relevant to several issues under 49 U.S.C. 11102(a), including: (1) whether CITGO uses other non-rail transportation modes for the movement of its fuels, lubricants, petrochemicals and other industrial products to/from CITGO's Lake Charles facility so that the public interest does not require BNSF to have direct terminal trackage rights in order for CITGO to have effective competition in its transportation options; (2) whether BNSF operations could substantially impair the ability of the rail carriers owning the facilities or entitled to use the facilities to handle their business; (3) the extent to which CITGO/BNSF's expansion plans may affect capacity on the line presently and in the future; (4) the impact of BNSF's direct service on non-CITGO shippers over the Rosebluff Industrial Lead; (5) CITGO's alleged service deficiencies due to BNSF's service being provided via reciprocal switch or haulage rights via the UP; (6) the adequacy, inadequacy, level of, and/or market effectiveness of BNSF rates vis-à-vis the rates provided by UP, KCSR, or any other

transportation mode for any product transported to/from CITGO's Lake Charles facility; (7) the potential cost savings BNSF may obtain by providing direct unit train service to CITGO's Lake Charles area facility instead of continuing to serve CITGO via a reciprocal switch provided by UP; and (8) any anticipated operational issues that may arise from BNSF choosing direct service or reciprocal switching, on a case-by-case basis. Documents related to these questions go to the very crux of what BNSF must establish in order for its application to be granted and certainly documents bearing on these questions "could" or "might" affect the outcome of this proceeding; yet, CITGO has refused to provide them.

INTERROGATORIES

KCSR's Interrogatories seek information on the presence of competition from non-rail modes for the movement of fuels, lubricants, petrochemicals and other industrial products to/from CITGO's Lake Charles facility, and the extent to which BNSF direct service over the line will initially affect KCSR and UP operations, as well as any foreseeable future impact of BNSF providing direct service to CITGO over the Rosebluff Industrial Lead (including restraints on capacity). All of these issues are relevant to the statutory requirements under which terminal trackage rights may be ordered. While CITGO provided answers to Interrogatories 1, 2, 5, and 6, CITGO did not provide a response to Interrogatory 3 and provided contradictory information for Interrogatory 4.

KCSR Interrogatory 3 requests that CITGO describe in detail each transportation mode used by CITGO for the previous three years for each inbound or outbound fuel, lubricant, petrochemical or other industrial product that was shipped to/from CITGO's Lake Charles Area facility, including volumes for each product and the modal percentage for each mode for each product category. There are many types of competition, rail-to-rail, rail-to-truck, rail-to-barge.

KCSR requests this information to perform a competitive analysis on the transportation options available to CITGO, which is relevant in determining the public interest aspect of BNSF direct access rights over the Rosebluff Industrial Lead. CITGO objects to KCSR's request on the grounds that the requested information is neither relevant nor likely to lead to the discovery of admissible evidence. As stated above, the requested information is relevant and to meet its burden to require production of the information, KCSR need not prove that the documents "will" affect the outcome, but rather that such documents "might" affect the outcome or could otherwise lead to other admissible evidence. In addition to KCSR using the information to develop a competitive analysis of the transportation options available to CITGO, the information is relevant for another reason: BNSF and CITGO claim that direct service will not substantially affect KCSR or UP operations over the Rosebluff Industrial Lead because BNSF would merely replace UP's service to CITGO. However, KCSR is concerned that adding direct service by BNSF could strain the capacity of the Rosebluff Industrial Lead. For example, if CITGO relies on barge transportation for a significant portion of its shipping needs, and an unforeseen problem develops that eliminates CITGO's ability to access barge transportation, CITGO could seek to increase the rail share of transportation, and, if BNSF's application is granted, could, in turn, request additional train service from BNSF. Yet, such increased demands on rail service by BNSF over the Rosebluff Industrial Lead could substantially affect UP's and KCSR's operations over the Rosebluff Industrial Lead to other shippers. Because the information requested is relevant to the statutory elements for granting a terminal trackage rights application, the Board should compel CITGO to provide an answer to Interrogatory no. 3.

KCSR Interrogatory 4 requests that CITGO describe the current capacity of CITGO's Lake Charles Area Facility. A review of CITGO's written response and CITGO's documents produced concerning CITGO's capacity has quite frankly left KCSR confused. CITGO responds in its written response that its operational track capacity at its Lake Charles Facility is [] railcars but the confidential documents CITGO produces in discovery indicates an operational capacity of [] cars for its facility.¹ Given the different CITGO responses to the same question, KCSR ask the Board to compel CITGO to clarify its current operational capacity at its Lake Charles Facility.

In both of the KCSR Interrogatories subject to this Motion, KCSR seeks information that is likely to be of great value, could impact the proceeding, is relevant, is not overbroad, and should not be unduly burdensome for CITGO to respond to (in fact, the information is likely kept in the ordinary course of business). Therefore, the Board should compel CITGO to provide an answer to Interrogatory no. 3 and clarify its inconsistent answer to Interrogatory no. 4.

DOCUMENT REQUESTS

Likewise, KCSR's Document Requests seek information relevant to how BNSF direct service will impact operations, given both KCSR and UP operate over the line, and also seek information relevant to whether it is in the public interest for BNSF to have direct trackage rights over the jointly owned property of KCSR and UP. KCSR is concerned that adding BNSF direct service will substantially impair the ability of KCSR and UP to use the facilities to handle their own business. Therefore, Document Requests 1, 4, 5, and 6 seek documents related to these operational concerns, as well as to the public interest standard. Document Requests 2, 8, and 9

¹ See CPC-0027-C.

seek information related to whether the public interest standard of 49 U.S.C. §11102(a) requires BNSF to have direct trackage rights over the Rosebluff Industrial Lead in order “[f]or CITGO to have the competitive option that the Board deemed critical,” See BNSF Opening Statement and Evidence at 17, or whether BNSF’s existing service via UP reciprocal/haulage service already fulfills that competitive option.

Document Request 1 requests all documents relating to BNSF's operational capabilities of providing existing or future rail service to CITGO's Lake Charles Area facility. CITGO responded that it will produce non-privileged responsive documents within its possession, custody or control. While CITGO produced a total of 75 documents, CITGO refuses to produce documents related to CITGO requesting BNSF direct service, BNSF’s ability to service CITGO’s Lake Charles Facility, BNSF’s proposed operations, or any operational concerns discussed, including any potential impact on KCSR and UP operations. Further, CITGO did not produce a single e-mail between CITGO and BNSF concerning plans for BNSF’s operations at CITGO’s Lake Charles Facility prior to March 2014, which is highly questionable given that other actions and documents indicate that BNSF and CITGO have been in discussions regarding direct service by BNSF at least since 2012. See BNSF Opening Statement and Evidence at 9. In fact, CITGO and BNSF purport that by 2012 reciprocal switch service via UP had become so unsatisfactory, that BNSF had to file its terminal trackage rights application. Given the asserted ineffectiveness of the reciprocal switch arrangement, one would expect that there would be a number of conversations/documents between CITGO and BNSF that address whether direct service by BNSF would in fact remedy CITGO’s operational concerns. CITGO should be compelled to produce all such documents involving BNSF service to its facility as clearly such documents could or might affect the outcome of this proceeding.

In the one email that CITGO did produce from March 2014, it discusses [] (CPC-0039-C to CPC-0040-C); however, CITGO omitted the attachment, which appears to []

[] Based on CITGO's lack of response to Document Request 1 and given that the request is not overbroad and production of the requested documents should not be unduly burdensome, KCSR asks the Board to compel CITGO to provide all documents in its possession that relate to BNSF's capabilities of providing existing or future rail service to CITGO's Lake Charles Area facility. Additionally, KCSR asks that the Board compel CITGO to produce the handouts referenced in the documents produced as CPC-0039-C to CPC-0040-C.

Document Request 4 requests documents relating to CITGO's use, lack of use, or proposed use of other non-rail transportation modes for the movement of fuels, lubricants, petrochemicals and other industrial products to/from CITGO's Lake Charles Area facility. For Document Request 4, CITGO restates its General Objections; CITGO further objects on the grounds that Document Request 4 requests information that is neither relevant nor likely to lead to the discovery of admissible evidence relating to BNSF's terminal trackage rights application, and it would impose an undue burden on CITGO in relation to the relevance and probative value of the information.

Despite CITGO's objections, the information requested in Document Request 4 relates to CITGO's operations, which as explained above with respect to Interrogatory 3, could potentially affect KCSR and UP's operations. Such information is also relevant to whether CITGO is already benefitting from BNSF's existing service via reciprocal switch so that BNSF direct access is not needed. CITGO does indicate that it will produce documents relating to a number of occasions in which CITGO was required to transload crude oil from railcars to barges as a result

of rail service failures or limitations on rail service to the CITGO Lake Charles unloading facility, but so far, CITGO has not produced any such documents. Furthermore, KCSR's review of the documents that CITGO has produced has generated more questions than answers. For example, CITGO produces a single e-mail thread describing various service problems, but KCSR is unable to determine whether CITGO's alleged service failures are attributable to exigent circumstances (which could affect all transportation modes) or issues with rail service and capacity at CITGO's Lake Charles Facility so that the addition of BNSF direct service would only exacerbate those problems.

As explained above, the information requested in Document Request 4 is relevant and necessary in determining whether the statutory elements required for granting BNSF terminal trackage rights are satisfied. CITGO's blanket objections based on relevancy and burden should be rejected. The evidentiary value of the documents and the potential ramifications for KCSR, UP, and other Rosebluff Industrial Lead shippers warrant disclosure, and strongly outweigh any burden in production for CITGO.

Document Request 5 seeks information on the adequacy, inadequacy, level of, and/or quality of KCSR's and UP's prior, future, or existing service to CITGO's Lake Charles Area facility. CITGO agreed to produce non-privileged responsive documents within its possession, custody or control, subject to and without waiving its General Objections. However, so far, CITGO has produced only one email² with respect to UP's service and has not produced a single document concerning KCSR's prior or future service.

² Even this email, which [] (CPC-0057-C to CPC-0058-C) omitted two attachments. Therefore, KCSR also asks that the Board compel CITGO to produce the attachments to the documents produced as CPC-0057-C to CPC-0058-C.

From public documents, it is known that CITGO claims that beginning in 2012 reciprocal switch service via UP had become so unsatisfactory that CITGO contacted BNSF about providing direct service. Shortly thereafter BNSF provided notice to UP that it would begin direct service in late 2012. So clearly there will be documents governing communications between UP and CITGO and CITGO and BNSF regarding the quality of UP service and the alleged need for BNSF service; yet, CITGO has produced hardly any responsive documents. Furthermore, from what it has produced, it is unclear whether the alleged service issues between UP and CITGO are related to CITGO over-ordering cars, limitations in the CITGO facility, or limitations with UP's reciprocal switch service. Put simply, CITGO has not provided relevant information on the adequacy, inadequacy, level of, and/or quality of KCSR's and UP's prior, future, or existing service to CITGO's Lake Charles Area facility. The information requested in Document Request 5 is directly relevant to establishment of the statutory elements necessary for the Board to grant BNSF's terminal trackage rights application.

Perhaps, CITGO is refusing to produce the requested information based on general objections pertaining to relevancy and burden; however, CITGO (through BNSF's terminal trackage rights application) has asked for extraordinary relief and yet appears to be claiming that it is burdensome to provide a basis for the requested relief. Because the quality and availability of KCSR and UP service are necessary to determining whether or not BNSF's terminal trackage rights should be granted, it is crucial that the Board compel CITGO to provide any documents in its possession that demonstrate why a change from reciprocal switch service via UP to BNSF direct service is warranted, in response to Document Request 5.

Document Request 6 seeks all documents relating to the adequacy, inadequacy, level of, and/or quality of BNSF's prior or existing service to CITGO's Lake Charles Area facility.

CITGO objects generally to the request, but also claims the information requested is neither relevant nor likely to lead to relevant and admissible evidence. However, according to CITGO and BNSF, the underlying reason for BNSF's direct trackage rights is that UP reciprocal switch service to CITGO had become "increasingly unsatisfactory." BNSF Opening Statement at 9. KCSR is entitled to view information that relates to that claim. Given that reciprocal service via UP is one of the main reasons cited for CITGO's desire to change from reciprocal switch service to BNSF direct trackage rights service, Document Request 6 has the potential to produce highly valuable evidence. Thus, we ask that the Board compel CITGO to provide any documents in its possession that relate to the adequacy, inadequacy, level of, and/or quality of BNSF's prior or existing service to CITGO's Lake Charles area facility. The probative value of the requested information clearly outweighs any burden for CITGO.

Document Requests 2, 8, and 9 seek information related to whether the public interest standard of 49 U.S.C. §11102(a) requires BNSF to have direct trackage rights over the Rosebluff Industrial Lead. Document Request 2 seeks information concerning efforts by BNSF or UP to market or solicit CITGO's business for the transportation of any fuel, lubricant, petrochemical and other industrial product to/from CITGO's Lake Charles Area facility, including copies of any prior, existing, or future contracts, proposals, or tariffs. Document Request 8 seeks information concerning documents relating to the adequacy, inadequacy, level of, and/or market effectiveness of BNSF's rates vis-à-vis the rates provided by UP, KCSR, or any other transportation mode for any product transported to/from CITGO's Lake Charles Area facility, and Document Request 9 seeks related studies, analyses, or reports, relating to any cost savings BNSF may obtain by providing direct unit train service to CITGO's Lake Charles are facility instead of continuing to serve CITGO via a reciprocal switch provided by UP.

In response to Document Requests 2, 8, and 9, CITGO objects generally and further claims that the requested information is unduly burdensome, and not relevant nor likely to lead to the discovery of admissible evidence related to the subject matter of BNSF's Terminal Trackage Rights Application. CITGO's general objections are an insufficient basis for refusing to produce the requested information. The information sought by KCSR bears on a statutory element (does the transaction serve the public interest) that must be satisfied for the Board to grant BNSF's Terminal Trackage Rights Application.

While not giving a specific reason for its relevancy objection, CITGO appears to have adopted BNSF's rationale for its refusal to produce responsive documents. Namely, that the Board has "already ... conclusively determined (in Decision No. 44), and then reconfirmed (in Decision No. 63) that direct BNSF service through the Lake Charles Condition is 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" (BNSF Railway Company's Reply To KCSR's Motion to Compel at 5) so that the public interest standard of §11102(a) has already been met with respect to Lake Charles. As such, according to BNSF, and adopted by CITGO, any documents that go the public interest standard are irrelevant.

KCSR fully addresses this argument in its motion to compel BNSF to produce responsive documents filed on February 6. As noted therein, it is KCSR's position that What the "public interest" requires in the context of this terminal trackage rights application is yet to be decided by the Board. While the Board once determined that BNSF needed access to Lake Charles area shippers as condition to the merger, but the Board has never determined the form or type of that access. Indeed, for eighteen years, BNSF has served the area via a reciprocal switch from UP or via haulage rights provided by UP. Now, only after BNSF has determined that it wants to move

unit trains of crude oil directly to CITGO, does BNSF claim that direct service to CITGO is necessary for it to provide the competitive role that the Board envisioned it to provide. KCSR is entitled to discovery of documents in CITGO's possession that relate to BNSF's claims and which go directly to the issue of whether the public interest requires BNSF direct trackage rights service to CITGO. Accordingly, KCSR respectfully requests that the Board order CITGO to respond promptly to Document Requests 2, 8 and 9.

As explained above, KCSR's Document Requests are all directed at whether the public interest standard of 49 U.S.C. §11102(a) requires BNSF direct trackage rights or whether such rights would interfere with UP's and KCSR's service to their existing customers. Given that much of the information requested should be contained in records kept in CITGO's ordinary course of business, could be produced with minimal effort by CITGO, and that the requested information is necessary to establishment of the statutory elements required for granting a terminal trackage right application, KCSR respectfully requests that the Board grant its motion to compel for the above document requests, and the missing documents referenced on documents produced as CPC-0039-C to CPC-0040-C and CPC-0057-C to CPC-0058-C.

EXPEDITED CONSIDERATION REQUESTED

KCSR respectfully requests expedited consideration for this Motion in order to provide KCSR with sufficient time to incorporate any responses into its March 2, 2015 comments. As the procedural schedule currently stands, KCSR's response is due on March 2, 2015. Under the Board's rules, CITGO has twenty days (until March 2) to respond to this Motion. Assuming CITGO waits until then to respond, there is no time for the Board to issue a decision, order the relevant documents produced (if it is inclined to do so), and for KCSR to analyze the documents and incorporate them into its pleading. Accordingly, KCSR requests that either the Board move

expeditiously, or, given that there is clearly a discovery dispute that requires time to resolve, KCSR suggests that the Board may want to refer the case to an administrative law judge (“ALJ”) and/or, at a minimum, grant an extension of time for KCSR to file its reply comments in order to allow sufficient time for resolution of the numerous discovery disputes.

CONCLUSION

KCSR respectfully requests that the Board consider this motion on an expedited basis and compel CITGO to promptly produce the information responsive to Interrogatories 3 and 4 and Document Requests 1, 2, 4, 5, 6, 8, and 9. KCSR also requests that the Board order CITGO to supplement its responses to the KCSR 1st Requests to account for the incomplete and missing documents CPC-0039-C to CPC-0040-C and CPC-0057-C to CPC-0058-C.

KCSR believes that the Document Requests that are the subject of this Motion are reasonable and relevant as they could affect the precise issues the Board will analyze under Section 11102 and the answers would aid KCSR, UP, and the Board in evaluating whether BNSF operations could substantially impair the ability of the rail carriers owning the facilities or entitled to use the facilities to handle their business. The Board should, if necessary, also refer these issues to an ALJ and grant an extension of time for UP and KCSR to reply to BNSF’s Opening Statement in order to provide sufficient time to resolve the various discovery disputes.

Respectfully submitted,



William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

Attorneys for Kansas City Southern Railway
Company

February 9, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing by mailing copies of Motion to Compel Responses to First Set Of Discovery Requests Directed To CITGO via prepaid first class mail to all parties of record in these proceedings or by more expeditious means of delivery.

Dated at Washington, D.C. this 9th day of February, 2015.



William A. Mullins
Attorney for Kansas City Southern Railway
Company

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SURFACE TRANSPORTATION BOARD**

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

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**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
MOTION TO COMPEL RESPONSES TO
SECOND DISCOVERY REQUESTS DIRECTED TO BNSF RAILWAY COMPANY**

APPENDIX A

KCSR's 1st REQUESTS AND CITGO'S WRITTEN RESPONSE

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

January 15, 2015

VIA EMAIL

Mr. Edward D. Greenberg
GKG Law
Canal Square,
1054 Thirty-First Street, N.W.
Suite 200
Washington, D.C. 20007-4492

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

Dear Ed:

On behalf of The Kansas City Southern Railway Company (“KCSR”), I am enclosing herewith KCSR’s First Discovery Requests directed to CITGO in the above-captioned proceeding. This discovery is served pursuant to the Surface Transportation Board’s regulations at 49 C.F.R. §1114.21, and related regulations.

Complete responses to these requests are due by January 30, 2015. Please feel free to contact me promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously. I can be reached by phone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

cc: W. James Wochner
David C. Reeves
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THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Telephone: (816) 983-1324
Facsimile: (816) 983-1227**

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Telephone: (202) 663-7820
Facsimile: (202) 663-7849**

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

Dated: January 15, 2015

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
FIRST SET OF DISCOVERY REQUESTS TO CITGO**

Pursuant to 49 C.F.R. §1114.21 through 1114.31, The Kansas City Southern Railway Company hereby directs the following discovery requests to CITGO. Responses should be served as soon as possible, and in no event later than January 30, 2015. CITGO is requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously, to avoid unnecessary delay to the proceeding.

THE RAILROAD ENTITIES

1. "BNSF" means BNSF Railway Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.
2. "KCSR" means The Kansas City Southern Railway Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

3. "UP" shall mean Union Pacific Railroad Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

DEFINITIONS

1. "Application" means the terminal trackage rights request and all related filings filed by BNSF before the STB in this sub-docket.
2. "Board" or "STB" means the Surface Transportation Board and its predecessor agency, the Interstate Commerce Commission, if applicable.
3. "CITGO" means a refiner and marketer of transportation fuels, lubricants, petrochemicals and other industrial products including its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.
4. "Describe" when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.
5. "Document" means any writing or other compilation of information, whether oral, printed, typed, handwritten, recorded, or produced or reproduced by any other process. It also means any communication in any form, including electronic mail; correspondence; telegrams;

memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further the term “document” includes:

- a. both basic records and summaries of such records (including computer runs); and
 - b. both original versions and copies that differ in any respect from the original version.
- notes.

6. “Including” means including without limitation.
7. "Lake Charles Area" shall mean Lake Charles, West Lake Charles, and Westlake, Louisiana.
8. “Person” means an individual, company, partnership, or other entity of any kind.
9. “Produce” means to make available to the undersigned attorneys for copying and viewing.
10. “Provide” (except where the word is used with respect to providing service or equipment) or “describe” means to supply a complete narrative response.
11. “Relate to” or “relates to” a subject means making a statement about, referring to, or discussing the subject, including actions taken or not taken, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.
12. “Request” means an interrogatory, request for admission or request for production of Documents or things.

13. "Rosebluff Industrial Lead" shall mean the former SP-operated single track which begins on the former SP Lafayette Subdivision between Dawes, Texas and Avondale, Louisiana, at MP 222.3 and extends to the south for approximately 9 miles and includes the Rosebluff Yard.
14. "Rosebluff Yard" shall mean the rail yard on the Rosebluff Industrial Lead approximately 0.50 miles south of the former SP Lafayette Division.
15. "Shipper" means a consignor, a consignee, receiver or other user of rail services.
16. "Studies, analyses and reports" include studies, analyses, and reports in whatever form. letters, memoranda, tabulations, and computer printouts of data selected from a database.
17. "This Proceeding" means STB Finance Docket No. 32760 (Sub-No. 46) BNSF Railway Company – Terminal Trackage Rights – Kansas City Southern Railway Company and Union Pacific Railroad Company.
18. "You" and "Your" means CITGO.

INSTRUCTIONS

1. These discovery requests ("Requests") call for all non-privileged information which is in the possession, custody, or control of CITGO and its affiliates, subsidiaries and counsel.
2. Where a Request has a number of separate subdivisions, or related parts or portions, a complete response is required to each part or portion. Any objection to a Request should clearly indicate the subdivision, part, or portion of the Request to which it is directed.
3. Each Request shall operate and be construed independently, and, unless otherwise indicated, no Request limits the scope of any other Request.
4. Words used in the singular shall include the plural and words used in the plural shall include the singular, whenever the context permits. Terms such as "and," "or," or "including" shall

be construed in the broadest and most inclusive manner, in the disjunctive or conjunctive as necessary, in order to call for all responsive information without limitation.

5. References to railroads, shippers, and other companies include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
6. References to the present tense shall be construed to include the past tense, and references to the past tense shall be construed to include the present tense, as necessary to bring within the scope of each Request all responsive information that might otherwise be construed to be outside the scope of the Request.
7. If You believe that any request or definition or instruction applicable there-to is ambiguous, set forth the language that You believe is ambiguous and the interpretation that You are using in responding to the Request.
8. If any document covered by a Request is withheld for whatever reason. any privilege, CITGO shall furnish a written document identifying all withheld documents in the following manner:
 - a. the specific Request to which the document is responsive;
 - b. the date of the document;
 - c. the name of each author or preparer;
 - d. the name of each Person who received the document and the name of such Person's employer at the time the Person received the document;
 - e. a brief description of the subject matter of the document and any withheld attachments or appendices;
 - f. the specific factual and legal basis for withholding; and

- g. the number of pages withheld.
9. Each document produced shall be an authentic original document or a true duplicate of an authentic original document.
 10. All requests are continuing and, pursuant to 49 C.F.R. § 1114.29, You are under a duty seasonably to supplement Your responses with respect to any question.
 11. Unless otherwise specified, these Requests cover the period beginning December 31, 1996 and ending with the date of the response.
 12. If You object to any Request or any part thereof, please state the reasons for such objection. all information forming the basis for such objection.
 13. If You know or later learn that a response to any Request is incorrect, You are under a duty seasonably to correct that response.
 14. Any delay in production of requested documents or answers to interrogatories is certain to prejudice the ability of KCSR to present evidence to the Board in this proceeding.
 15. Responsive documents should be produced to the undersigned counsel at Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, not later than (15) days after the date of service, meaning no later than January 26, 2015. Serial production of relevant documents and narrative responses during that period is encouraged and requested. Objections, if any, should be made as soon as possible, and not later than 10 days after the date of service of the requests.
 16. You should contact William A. Mullins at (202) 663-7823 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

17. If CITGO has information that would permit a partial answer to any interrogatory or document request, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that request, and if the burden of conducting such special study would be greater for CITGO than for KCSR:
- a. state that fact;
 - b. provide the partial answer that may be made with information available to CITGO;
 - c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer; and
 - d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer.

REQUEST FOR ADMISSION

1. Admit or Deny: There is a signed industry track agreement between CITGO, UP, and KCSR governing the loading, unloading, switching, and placement of rail cars in the CITGO Lake Charles Area facility yard.
2. Admit or Deny: UP and KCSR have proposed to CITGO a new industry track agreement that would increase the number of cars that could be delivered into the CITGO Lake Charles Area rail yard but that CITGO has not yet signed that agreement.

INTERROGATORIES

Interrogatory No. 1. Does CITGO have any track expansion plans for its Lake Charles Area facility, and if so, describe those plans, including any proposed budget for such expansion plans?

Interrogatory No. 2. Does CITGO have any available funds for the current fiscal year to undertake any track expansion or track capacity improvements at its Lake Charles Area facility, and if so, provide a detailed breakdown of how those funds will be spent?

Interrogatory No. 3. Describe in detail each transportation mode used by CITGO for the previous three years for each inbound or outbound fuel, lubricant, petrochemical or other industrial product that was shipped to/from CITGO's Lake Charles Area facility, including volumes for each product and the modal percentage for each mode for each product category.

Interrogatory No. 4. Describe the current capacity of CITGO's rail tracks at CITGO's Lake Charles Area facility.

Interrogatory No. 5. Describe how CITGO currently loads, unloads, switches, and stores railcars at its Lake Charles Area facility and identify on a map the specific building or tracks used by CITGO for the loading and unloading process and where CITGO stores unloaded railcars.

Interrogatory No. 6. If today BNSF were to deliver a 60 car loaded unit train to CITGO's Lake Charles Area Facility, describe the process by which CITGO would store, load, unload, and switch those railcars and whether such a process would require the use of any non-CITGO owned tracks or property.

DOCUMENT REQUESTS

Document Request No. 1. Provide copies of all Documents relating to BNSF's operational capabilities of providing existing or future rail service to CITGO's Lake Charles Area facility.

Document Request No. 2. Provide copies of all Documents involving efforts by BNSF or UP to market or solicit CITGO's business for the transportation of any fuel, lubricant, petrochemical and other industrial product to/from CITGO's Lake Charles Area facility, including copies of any prior, existing, or future contracts, proposals, or tariffs.

Document Request No. 3. Provide copies of all Documents relating to the existing capacity and/or track design, including any engineering drawings or schematics, of rail facilities at

CITGO's Lake Charles Area facility, including any Documents relating to expansion, modification, or a change to the existing design or capacity.

Document Request No. 4. Provide copies of all Documents relating to CITGO's use, lack of use, or proposed use of other non-rail transportation modes for the movement of fuels, lubricants, petrochemicals and other industrial products to/from CITGO's Lake Charles Area facility.

Document Request No. 5. Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or quality of KCSR's and UP's prior, future, or existing service to CITGO's Lake Charles Area facility.

Document Request No. 6. Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or quality of BNSF's prior or existing service to CITGO's Lake Charles Area facility.

Document Request No. 7. Provide copies of all Documents reflecting any communications relating to the adequacy, inadequacy, level of, and/or quality of UP's switching services to/from the Lake Charles Area facility, including any requests by CITGO to UP requesting improvements in, or changes to, such switching service.

Document Request No. 8. Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or market effectiveness of BNSF's rates vis-à-vis the rates provided by UP, KCSR, or any other transportation mode for the transportation of any product transported to/from CITGO's Lake Charles Area facility.

Document Request No. 9. Provide copies of all Documents, including any studies, analyses, or reports, relating to any cost savings CITGO may incur by BNSF providing direct unit train service to CITGO's Lake Charles Area facility instead of continuing to serve CITGO via a reciprocal switch provided by UP.

Document Request No. 10. Provide copies of all Documents reflecting any communications relating to the capacity, lack of capacity, adequacy, inadequacy, and/or operational capabilities of the rail and unloading facilities at CITGO's Lake Charles Area facility to load, unload, or store BNSF cars if BNSF were to deliver unit trains in the manner as set forth in BNSF's December 31, 2014 filing in this proceeding.

Respectfully submitted,



William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Fax: (202) 663-7849

January 15, 2015

Attorneys for The Kansas City Southern
Railway Company

CERTIFICATE OF SERVICE

I, William A. Mullins, hereby certify that on this 15th day of January, 2015, copies of the foregoing Discovery Requests were served via email upon counsel for CITGO.



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

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32760 (Sub-No. 46)

**BNSF RAILWAY COMPANY
– TERMINAL TRACKAGE RIGHTS –
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

**CITGO PETROLEUM CORPORATION'S
RESPONSES TO KANSAS CITY SOUTHERN RAILWAY COMPANY'S FIRST SET OF
DISCOVERY REQUESTS**

Pursuant to Part 1114 of the Surface Transportation Board's ("STB" or "Board") Rules of Practice, 49 C.F.R. Part 1114, Intervenor CITGO Petroleum Corporation ("CITGO") hereby submits its objections and responses to the Kansas City Southern Railway Company's ("KCSR") First Set of Discovery Requests to CITGO. CITGO responses are based on information discovered by means of a reasonable search of files, documents, data and other information presently within the possession, custody or control of CITGO. CITGO specifically reserves the right to supplement its responses upon the discovery of additional responsive information.

GENERAL OBJECTIONS

The following General Objections apply to each of KCSR's First Set of Discovery Requests to CITGO, and are in addition to any objections set forth herein with respect to specific discovery requests.

A. CITGO objects to the Definitions and/or Instructions in KCSR's First Set of Discovery Requests to CITGO to the extent they individually or in the aggregate exceed or alter

the requirements of the applicable STB Rules of Practice, including without limitation, 49 C.F.R. Part 1114.

B. CITGO objects to the production of any information, document, data, or other material that is subject to a claim of privilege, including without limitation information or materials subject to the attorney client privilege, the work product immunity, prepared in anticipation of litigation, or relating to settlement discussions or negotiations.

C. CITGO objects to the production of confidential, non-public, proprietary or competitively sensitive documents, data or information. Subject to and without waiving this objection, CITGO will produce such confidential information, if otherwise responsive and subject to production, only under the terms of the Protective Order entered in this proceeding.

D. CITGO objects to the production of any information, documents, data, or other materials that are not relevant to the subject matter involved in this proceeding.

E. CITGO objects to KSCR's First Set of Discovery Requests to CITGO to the extent that any request would impose an undue burden on CITGO in relation to the relevance and probative value of the information, require the production of information that is publicly available, require production of information already produced to, or in the possession of, or equally available to, KCSR.

F. CITGO objects to KSCR's First Set of Discovery Requests to CITGO to the extent that any request is overbroad.

G. CITGO objects to KSCR's First Set of Discovery Requests to CITGO to the extent that any request is vague or ambiguous.

H. CITGO objects to the definition of "CITGO" as overbroad, vague, ambiguous to the extent it defines "CITGO" as any other person or entity other than CITGO Petroleum Corporation.

I. CITGO objects to Instruction No. 1 as overbroad and in excess of the requirements of the STB Rules of Practice to the extent it purports to require CITGO to provide information or produce documents that are not within the possession, custody or control of CITGO.

J. CITGO objects to Instruction No. 5 as overbroad and in excess of the requirements of the STB Rules of Practice to the extent it purports to require CITGO to provide information or produce documents that are not within the possession, custody or control of CITGO.

K. CITGO objects to Instruction No. 11 on the grounds of overbreadth and relevance to the extent it purports to require CITGO to search for or provide information or documents prior to the period September 2012 to the present.

L. CITGO objects to Instruction No. 15 as inconsistent with the requirements of the STB Rules of Practice to the extent it purports to require CITGO to provide objections and/or responses within a period of less than 15 days.

REQUEST FOR ADMISSION

1. Admit or Deny: There is a signed industry track agreement between CITGO, UP, and KCSR governing the loading, unloading, switching, and placement of rail cars in the CITGO Lake Charles Area facility yard.

RESPONSE: Admit.

2. Admit or Deny: UP and KCSR have proposed to CITGO a new industry track agreement that would increase the number of cars that could be delivered into the CITGO Lake Charles Area rail yard but that CITGO has not yet signed that agreement.

RESPONSE: Admit.

INTERROGATORIES

Interrogatory No. 1. Does CITGO have any track expansion plans for its Lake Charles Area facility, and if so, describe those plans, including any proposed budget for such expansion plans?

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO states that it has completed its track improvement and expansion plans, and has no current plans for further expansion of its rail infrastructure at the CITGO Lake Charles refinery based on current market and operational conditions.

Interrogatory No. 2. Does CITGO have any available funds for the current fiscal year to undertake any track expansion or track capacity improvements at its Lake Charles Area facility, and if so, provide a detailed breakdown of how those funds will be spent?

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO states that it has completed its track improvement and expansion plans, and has no plans for further expansion of its rail infrastructure at the CITGO Lake Charles refinery during the current fiscal year. CITGO believes that funds could be made available for further track improvements or expansions should the need arise.

Interrogatory No. 3. Describe in detail each transportation mode used by CITGO for the previous three years for each inbound or outbound fuel, lubricant, petrochemical or other industrial product that was shipped to/from CITGO's Lake Charles Area facility, including volumes for each product and the modal percentage for each mode for each product category.

RESPONSE: In addition to CITGO's above-stated General Objections, CITGO further specifically objects to Interrogatory No. 3 on the grounds that it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject

matter of the Terminal Trackage Rights Application filed by BNSF Railway Company ("BNSF") on December 31, 2014.

Interrogatory No. 4. Describe the current capacity of CITGO's rail tracks at CITGO's Lake Charles Area facility.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO states that the total operational track capacity at CITGO's Lake Charles facility available for use in rail crude oil shipments is 161 railcars.

Interrogatory No. 5. Describe how CITGO currently loads, unloads, switches, and stores railcars at its Lake Charles Area facility and identify on a map the specific building or tracks used by CITGO for the loading and unloading process and where CITGO stores unloaded railcars.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO states that railcars loaded with crude oil are brought into the CITGO Lake Charles crude unloading facility in a single train on Track 827, which runs west, then south, and then east around the unloading facility. CITGO has sufficient track to store 90 railcars loaded with crude oil. After the railcars are delivered by the railroad, CITGO stages the cars in blocks of 12 cars at the unloading rack located on Tracks 834 and 835. After unloading, empty rail cars are moved to empty car storage tracks, Tracks 828-832. Additional empty railcar storage is available on Tracks 833-836.

Interrogatory No. 6. If today BNSF were to deliver a 60 car loaded unit train to CITGO's Lake Charles Area Facility, describe the process by which CITGO would store, load, unload, and switch those railcars and whether such a process would require the use of any non-CITGO owned tracks or property.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO states that over the past nine months, UP has delivered more than 50 railcars at a time 11 times and more than 40 railcars at a time 35 times. The process for handling a 60-car unit train from BNSF would be no different from the process used when UP has delivered 40 or 50

manifest cars in the past. A 60-car BNSF unit train would be brought into the facility on Track 827 as one continuous train of loaded cars. CITGO would stage and unload cars in blocks of 12. After unloading, empty railcars would be moved to the empty storage locations on Tracks 828-832 at the East side of the facility. BNSF would then pull the empties from the storage track. The delivery, staging, unloading, storage and pick up of railcars for a BNSF 60-car unit train service would not require the use of tracks outside the CITGO facility.

DOCUMENT REQUESTS

Document Request No. 1. Provide copies of all Documents relating to BNSF's operational capabilities of providing existing or future rail service to CITGO's Lake Charles Area facility.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO will produce non-privileged responsive documents within its possession, custody or control.

Document Request No. 2. Provide copies of all Documents involving efforts by BNSF or UP to market or solicit CITGO's business for the transportation of any fuel, lubricant, petrochemical and other industrial product to/from CITGO's Lake Charles Area facility, including copies of any prior, existing, or future contracts, proposals, or tariffs.

RESPONSE: In addition to CITGO's above-stated General Objections, CITGO further specifically objects to Document Request No. 2 on the grounds that (1) it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject matter of the Terminal Trackage Rights Application filed by BNSF on December 31, 2014, and (2) it would impose an undue burden on CITGO in relation to the relevance and probative value of the information.

Document Request No. 3. Provide copies of all Documents relating to the existing capacity and/or track design, including any engineering drawings or schematics, of rail facilities at CITGO's Lake Charles Area facility, including any Documents relating to expansion, modification, or a change to the existing design or capacity.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO will produce non-privileged responsive documents within its possession, custody or control.

Document Request No. 4. Provide copies of all Documents relating to CITGO's use, lack of use, or proposed use of other non-rail transportation modes for the movement of fuels, lubricants, petrochemicals and other industrial products to/from CITGO's Lake Charles Area facility.

RESPONSE: In addition to CITGO's above-stated General Objections, CITGO further specifically objects to Document Request No. 4 on the grounds that (1) it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject matter of the Terminal Trackage Rights Application filed by BNSF on December 31, 2014, and (2) it would impose an undue burden on CITGO in relation to the relevance and probative value of the information. Subject to and without waiving its objections, CITGO will produce documents relating to a number of occasions in which CITGO was required to transload crude oil from railcars to barges as a result of rail service failures or limitations on rail service to the CITGO Lake Charles unloading facility.

Document Request No. 5. Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or quality of KCSR's and UP's prior, future, or existing service to CITGO's Lake Charles Area facility.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO will produce non-privileged responsive documents within its possession, custody or control.

Document Request No. 6. Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or quality of BNSF's prior or existing service to CITGO's Lake Charles Area facility.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO further specifically objects to Document Request No. 6 to the extent it relates to BNSF's

rail service at any location other than the CITGO Lake Charles refinery on the grounds that the Request is overbroad and seeks the production of documents that are neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject matter of the Terminal Trackage Rights Application filed by BNSF on December 31, 2014. Subject to and without waiving its objections, CITGO states that BNSF does not currently provide direct service to CITGO's Lake Charles refinery.

Document Request No. 7. Provide copies of all Documents reflecting any communications relating to the adequacy, inadequacy, level of, and/or quality of UP's switching services to/from the Lake Charles Area facility, including any requests by CITGO to UP requesting improvements in, or changes to, such switching service.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO will produce non-privileged responsive documents within its possession, custody or control.

Document Request No. 8. Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or market effectiveness of BNSF's rates vis-a-vis the rates provided by UP, KCSR, or any other transportation mode for the transportation of any product transported to/from CITGO's Lake Charles Area facility.

RESPONSE: In addition to CITGO's above-stated General Objections, CITGO further specifically objects to Document Request No. 8 on the grounds that it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject matter of the Terminal Trackage Rights Application filed by BNSF on December 31, 2014.

Document Request No. 9. Provide copies of all Documents, including any studies, analyses, or reports, relating to any cost savings CITGO may incur by BNSF providing direct unit train service to CITGO's Lake Charles Area facility instead of continuing to serve CITGO via a reciprocal switch provided by UP.

RESPONSE: In addition to CITGO's above-stated General Objections, CITGO further specifically objects to Document Request No. 9 on the grounds that it requests information that is

neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject matter of the Terminal Trackage Rights Application filed by BNSF on December 31, 2014.

Document Request No. 10. Provide copies of all Documents reflecting any communications relating to the capacity, lack of capacity, adequacy, inadequacy, and/or operational capabilities of the rail and unloading facilities at CITGO's Lake Charles Area facility to load, unload, or store BNSF cars if BNSF were to deliver unit trains in the manner as set forth in BNSF's December 31, 2014 filing in this proceeding.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO will produce non-privileged responsive documents within its possession, custody or control.

State of Louisiana
County of Calcasieu
SS:

VERIFICATION

Michael Barrett being duly sworn, deposes and says that he has read the foregoing Interrogatories, knows the facts asserted there are true and that the same are true as stated.

Executed on January 29, 2015

Michael Barrett

Subscribed and sworn to before me this 29 day of 2015.

Notary Public of Louisiana
My Commission expires my death.

Charles N. Halger
Bar ID # 01069

Respectfully submitted,



Edward D. Greenberg
David K. Monroe
Svetlana Lyubchenko
GKG Law, P.C.
Canal Square
1054 Thirty-First Street, N.W.
Washington, D.C. 20007
Ph.: 202-342-5277

Charles N. Harper
Senior Corporate Counsel
Refining Ops-LCMC
CITGO Petroleum Corporation
P. O. Box 1562
Lake Charles, LA 70602
Ph.: 337-708-7422

*Counsel for CITGO Petroleum
Corporation*

Dated: January 30, 2015

CERTIFICATE OF SERVICE

I hereby certify this 30th day of January, 2015, that I have caused the foregoing CITGO Petroleum Corporation's Responses to KCSR's First Discovery Requests to be served as indicated below on the following counsel of record for the parties:

Adrian L. Steel, Jr.
Robert M. Jenkins III
Adam C. Sloane
Mayer Brown LLP
1999 K Street, N.W.
Washington, DC 20006

William A. Mullins
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037

Roger P. Nober
Richard E. Weicher
David T. Rankin
Courtney Biery Estes
BNSF Railway Company
250 Lou Menk Drive
Forth Worth, TX 76131

W. James Wochner
David C. Reeves
The Kansas City Southern Railway
Company
P.O. Box 219335
Kansas City, MO 64121

Counsel for BNSF Railway Company

*Counsel for Kansas City Southern
Railway Company*

Gayola L. Thal
Robert N. Bent
Louise A. Rinn
Elisa B. Davies
Jeremy M. Berman
Union Pacific Railroad Company
1400 Douglass Street
Omaha, Nebraska 68179

Michael L. Rosenthal
Spencer F. Walters
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Counsel for Union Pacific Railroad Company



David K. Monroe

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
MOTION TO COMPEL RESPONSES TO
SECOND DISCOVERY REQUESTS DIRECTED TO BNSF RAILWAY COMPANY**

APPENDIX B

**CONFIDENTIAL DOCUMENTS CITED IN THIS MOTION
(DOCUMENTS REDACTED IN PUBLIC VERSION)**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
MOTION TO COMPEL RESPONSES TO
SECOND DISCOVERY REQUESTS DIRECTED TO BNSF RAILWAY COMPANY**

APPENDIX B

**CONFIDENTIAL DOCUMENTS CITED IN THIS MOTION
(DOCUMENTS REDACTED IN PUBLIC VERSION)**