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October 22, 2014

VIA Hand Delivery

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

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ENTERED
Office of Proceedings
October 22, 2014
Part of
Public Record

**RE: United States Rail Service Issues – Data Collection
STB Docket No. EP 724 (Sub-No. 3)**

Dear Ms. Brown:

In response to the Board's order issued October 8, 2014 in the above proceeding ("Order"), The Kansas City Southern Railway Company ("KCS") hereby files an original and eleven copies of its weekly data report, along with a corresponding Petition for Waiver ("Petition") requesting a waiver from certain filing requirements set forth in the Board's Order. Because the Order was not issued pursuant to notice and comment and the reporting requirements have not yet been adopted as regulations, the filing fee requirements of 49 CFR §1002.2(f)(64) are not applicable to the corresponding Petition. As such, KCS has attached a filing fee check in the amount of \$300 in compliance with 49 CFR §1002.2(f)(88).

Also accompanying are a copy of KCS' report pursuant to the Board's October 8 order, and an explanation of how the data reflected in the report was derived.

Please date stamp the eleventh copy and return it to the courier for return to our offices. If there are any questions, please do not hesitate to contact me.

Sincerely,



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

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. EP 724 (SUB-NO. 3)

UNITED STATES RAIL SERVICE ISSUES – DATA COLLECTION

**PETITION FOR WAIVER, FILED ON BEHALF OF THE KANSAS CITY SOUTHERN
RAILWAY COMPANY**

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**Attorneys for The Kansas City Southern
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Dated: October 22, 2014

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. EP 724 (SUB-NO. 3)

UNITED STATES RAIL SERVICE ISSUES – DATA COLLECTION

**PETITION FOR WAIVER, FILED ON BEHALF OF THE KANSAS CITY SOUTHERN
RAILWAY COMPANY**

By this Petition for Waiver ("Petition"), The Kansas City Southern Railway Company ("KCS") seeks a waiver of the provisions of the Surface Transportation Board's ("STB's" or "Board's") order of October 8, 2014 in this docket ("Order") that would require KCS to report grain traffic data on a state-by-state or regional basis. Due to the regional nature of the KCS rail network and the limited number of grain customers it serves and based on KCS' analysis of its grain traffic, KCS has determined that reporting volumes state-by-state and week-by-week or reporting shuttle trains on a more granular basis than systemwide - based on KCS' smaller, more regional system - would inevitably reveal the volumes of movements occurring and planned by specific KCS shippers. Revealing such information to those specific shippers' competitors would unintentionally harm their businesses, violating both the letter and the spirit of 49 USC §11904. Indeed, one of KCS' major shippers raised exactly this concern with KCS shortly after the Order was issued. KCS submits, therefore, that a waiver of the requirements to report any state-by-state data on the Board's schedules 7 and 8 or to report anything more granular than systemwide data on shuttle trains is fully justified, and that KCS, given its smaller regional footprint, should be allowed to submit only totals in each of the Board-prescribed columns on schedules 7 and 8 and to report a single systemwide "region" on schedule 9.

Background. On October 8, 2014, the Board, without notice to or seeking comment from affected parties,¹ ordered all Class I railroads to publicly file weekly data reports on various shipment groups, including grain. The Order was intended to respond to concerns raised at the hearings held under United States Rail Service Issues, Docket No. EP 724 and in related communications. Notwithstanding that KCS was not the subject of the hearings or service complaints, the Order directed KCS to comply with the reporting requirements. KCS is submitting concurrently with this Petition KCS's data responsive to the Order, consistent with the waiver requested in this Petition.

Discussion. Filed concurrently with this Petition is KCS's report responding to the Order's weekly data-reporting requirement ("Report"). Attached to the Report is an explanation, provided by Mr. Greg Walling, KCS Vice President of Network Design, of the basis of KCS' reported data. Mr. Walling's explanation discusses the business rules that were applied in gathering and sifting the data sought by the Order, including the various assumptions that were applied.

¹ Because the reporting requirements were not issued pursuant to notice and comment, the reporting requirements are not binding regulations, see National Motor Freight Traffic Ass'n v. United States, 268 F. Supp. 90 (D.C.C. 1967), affirmed 393 U.S. 18 (1960), Pickus v. United States Board of Parole, 507 F. 2d 1107 (D.C. Cir. 1974); Pacific Gas & Electric Co. v. Federal Power Com'n, 564 F. 2d 633 (4th Cir. 1977), cert. denied 435 U.S. 995 (1978); and Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (U.S. 1983), even though the reporting requirements effectively amend the Board's regulations in 49 CFR Parts 1241-1259, particularly Parts 1247 and 1248. Changing existing regulations requires a rulemaking proceeding such as the Board has indicated the intent to commence. See Order, at 2, n. 6. A rulemaking proceeding would allow clarification of and comment on the Board's purposes in seeking data and in ordering publication of such data; and on possible better and less burdensome ways to meet those objectives; on whether the required reporting and disclosure is consistent with 49 U.S.C. §11904; and would address various regulatory requirements dealing with the benefits and burdens of the proposed regulations. As no such proceeding has been conducted by the Board, KCS respectfully suggests that the Board's Order was improperly adopted. Nevertheless, KCS is complying with the Order, subject to the qualifications stated in this Petition.

With respect to Items 7, 8, and 9, KCS has on-line unit train and/or shuttle grain origins in only 4 states - Kansas, Iowa, Missouri, and Illinois. In several instances, KCS has only one to three on-line origins per state loading each of the various size blocks (i.e., carload, unit and shuttle) of grain cars.²

The limited number of customer origins in those 4 states is such that several shippers could, by knowing their own volumes, discern the volumes shipped by their shuttle, unit train and carload competitors. This effect would be exacerbated as weekly data accumulates since certain customers would, by knowing in which weeks they did not ship, be able to see how much their competitors were shipping. Finally, data reporting on shuttle train cycles, if broken down to less than a systemwide basis for KCS, would give the shuttle loaders' competitors knowledge of the shuttle loaders' cycle times.

As a hypothetical example, assume that in State X there are two unit train loaders and two shippers shipping in smaller lots, as is the case in some states where KCS originates grain traffic. If unit train loader A knows that it loaded two unit trains that week, and KCS reports 3 unit trains loaded that week in that state, loader A would know that its competitor loaded only one train. Similarly, if KCS reported 125 cars loaded by non-unit train loaders in that state for that week, each of smaller loaders could easily determine its competitor's volume by merely

² As KCS has noted several times in various proceedings, KCS receives approximately 85% of its traffic in interchange from other railroads. This proportion of traffic received in interchange differentiates KCS from other, larger Class I's, who have a majority of local traffic. KCS's size, as the smallest of the Class I's, likewise limits the number of on-line origins, compared to its much larger competitors. Accordingly, revelation of state-by-state or regional data by KCS is much more likely to reveal the competitively-sensitive specifics of KCS's on-line customers' business than would be the case with the larger Class I's revealing similar data.

That 85% of KCS' traffic is interchanged with other carriers also means that KCS's operations are significantly dependent upon the service performance of its Class I interchange connections. This also means that KCS generally does not have data relevant to locations where it does not physically serve.

subtracting its volume from the total. Likewise, if unit train loader A knows that it has ordered no cars for the next week, and sees that there is one unit train ordered for the next week, loader A knows how much its competitor is planning to ship.

If KCS were to breakdown its unit or shuttle grain data as requested in Items 7, 8, and 9 of the Order, the data would disclose the confidential information of specific KCS shippers to their competitors. This information could be used by the competitors of these specific shippers to gain competitive business advantage over KCS shippers.

Volume information of the type discernable from the disaggregated grain data called for by schedules 7, 8 and 9 of the Board's form data spreadsheet is "quantity" information, specified in Section 11904(b) as a type of information railroads are prohibited from disclosing about their customers. KCS believes, given the very limited number of unit trains originations in these four states, if KCS were to provide the information requested in Items 7, 8, and 9 of the Order, that doing so would be a violation of 49 U.S.C. §11904 because publication of the information could be used to the detriment of KCS's shippers.³ Indeed, KCS shippers are aware of the Board's Order and have specifically requested KCS to not disclose grain traffic data in the disaggregated fashion required by the Order.


Accordingly, to avoid the potential for the unlawful disclosure of specific shipper information and to protect the confidentiality of its shippers' shipping volumes, KCS is reporting its unit grain train information in aggregate form as explained by Mr. Walling. This is technically not allowed by the Order, which calls for a breakdown by state. As such, KCS specifically requests a waiver from the Order's requirement to report grain train information by

³ Because KCS is so dependent upon interchange traffic and serves only a very small number of grain originations for carload traffic in each state where it has origins, and even fewer unit train origins, KCS believes it may be the only Class I that the issue of reporting by state creates a problem, placing KCS shippers at unique risk of competitive harm if this Petition is not granted.

state or by region, as required by Items 7, 8, and 9 of the Order. A waiver is fully consistent with the Board's practice of protecting confidential information.⁴ Reporting the information as described by Mr. Walling also serves the dual purpose of providing the Board, and the public, with carload numbers, dwell times, and performance metrics, while protecting the individual grain shipper's competitive information from being disclosed.

Respectfully submitted,

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Dated: October 22, 2014

⁴CSX Corporation And CSX Transportation, Inc. – Control – The Indiana Railroad Company, FD 32892 (STB served May 3, 1996)(granting waiver from requirement to disclose financial consideration because of the commercial sensitivity of the information).

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STB DOCKET NO. EP 724 (Sub-No. 3)

Business Rules

The Kansas City Southern Railway Company's (KCSR's) submission of service metrics as required by the Surface Transportation Board's (STB's) October 8, 2014 order in STB Docket No. EP 724 (Sub-No. 3) (Order) is described in the following business rules outline.

As an overview, KCSR seeks to supply the information required by the Order using currently available data and intact reporting that requires consolidation from multiple sources on a weekly basis. It is intended that weekly submissions are to be filed on Mondays (and in any event not later than Wednesdays), concurrently with submission of certain operating statistics that are currently available to the public on the Association of American Railroads' (AAR's) website.

KCSR's operating system MCS is the predominant source of data, while processes and systems both feed and extract data for creation of the metrics required by the Order. One example of these systems is Business Objects. Business Objects sits atop of MCS data that is stored in various "warehouses" for purposes such as extracting selected data. Although the consolidation and presentation of many of these metrics may be manual, the underlying process of accumulating the data comprising the metric is automated.

Data on originations is confined to on-line origins and those served via haulage and reciprocal switch. While KCSR supplies certain customers in NE and IA with KCSR covered hoppers for grain loadings, KCSR does not directly serve these origins and thus has limited control and visibility into off-line service data.

KCSR participation in crude oil movements is currently limited, though significant growth is looming. KCSR classifies Oil trains in MCS as an "O" symbol. This symbol will be used to isolate the data for velocity reporting. A small number of aggregate (rock) trains are also currently reported in this train category. To avoid having to create new categories, which would damage comparability with historical data, KCSR's intention is to leave the aggregate trains consolidated inside the "O" category as long as the resultant velocity metric reflects the true performance of ALL trains in the category. Unit Ethanol trains would also bear the "O" symbol in MCS, but KCS does not currently operate any unit ethanol trains.

Various car level metrics, such as cars not moved in 48 to 120 hours, are reported on a snapshot in time basis. Currently this point in time is on Sunday mornings, to reflect a picture of the state of the railroad as a result of many of the metrics displayed like velocity and dwell that describe a larger process and time. The single data point in time nature of these metrics viewed over multiple weeks is a superior means of looking at railroad performance/fluidity over an average of a reporting time frame. The trend in the data is the take-away.

KCSR operates unit trains from a limited number of origins across several states. While unit trains are generally excluded from dwell metrics because they are not subject to switching at

intermediate yards, there are some instances at interchange points where cars from unit trains are inventoried and "dwell." This "dwell" is largely reflected in Kansas City's current and historical dwell metrics. The business rules for unit train originations help to demonstrate controllable origin dwell. However, the key metric many of KCSR's customers in the grain business focus on is turn times, of which this origin dwell is a factor. A longstanding and directionally correct metric is an existing cycle time metric used to measure shuttle trains in franchise service. "Franchise" refers to a group of destinations representative of KCSR's shuttle business. The value of this metric is again in the trend, to include a look at a year over year comparison as a fluidity metric. The Trip Plan for shuttle trains differs each and every trip. Hence, looking at a similar group of trains - "franchise trains" - from the same period in the prior year provides a more meaningful basis for evaluation.

Consistent with the petition for waiver of the Order's reporting requirements filed concurrently herewith, KCSR is reporting on spreadsheets 7 and 8 only totals, under each of the columns established by the Board's form spreadsheet. Similarly, spreadsheet 9, KCS is not reporting cycle times by region but rather as a single, "Franchise" region. Due to the limited number of on-line loaders in each size category in each of the states where KCS originates grain, splitting data up into the many subsets required by the Board's spreadsheets would often leave 2 or maybe only one shipper in a particular category such as a shuttle loader in a particular state or even region. Having only one or two or even three shippers of a particular loading size and in a particular state would allow each to deduce the shipment volumes and car orders of the other. Accordingly, on spreadsheets 7 and 8 KCS has presented only a total in each column, not broken down by state, and on spreadsheet 9 KCS has presented a single region for its system, encompassing the cycle times of all shuttles operated by KCS.

SERVICE METRICS

1. System Average Train Speed by Train Type
 - a. Presented via Daily Scorecard 7 Day Average
 1. Intermodal- reported separately
 2. Grain- reported separately
 3. Coal- reported separately
 4. Automotive- Unused at this point in the US
 5. Crude- reported in Other category
 6. Ethanol- reported in Other category
 7. Manifest- reported separately
 8. All Other- reported in Other category
2. Dwell Metrics
 - a. System Dwell is from Daily Scorecard
 - b. Top 10 terminals (derive from accumulation of 7 days of Dwell)
 - i. Average of Actual Resultant Hours
 1. Shreveport
 2. Jackson
 3. Kansas City
 4. Laredo
 5. Port Arthur
 6. Wylie

7. Artesia
8. Heavener
9. Leesville
10. Baton Rouge

3. Cars on Line

- Snapshot of the inventory as of each Sunday morning
- MCS General Inquiry is separated by car types:
 - Box (A,B)
 - Covered Hoppers (C)
 - Gondola (E,G)
 - Intermodal (P,Q,S)
 - Multilevel (V)
 - Open Hopper (H, J, K)
 - Tank (T)
 - Other (all others)
 - Total

4. Weekly Average Dwell Time at Origin for Unit Train Shipments

- a. Source Data: derive from accumulation of 7 days of Dwell
- b. Defined list of train types - A, C, D, G, O, V
- c. Average of Resultant Hours

5. Weekly Total Number of Trains Held Short of Destination

- a. Data Source: Business Objects
- b. Event = Hold
- c. Time stamp that drives reporting is "Delayed Departure Timestamp"
- d. Delay Duration > 6 hours
- e. Work Trains, Road Switchers, Locals, Yard Jobs excluded

6. Weekly Total Number of Loaded and Empty Revenue Cars that have not moved

- a. Point in time metric
- b. Data source: Same MCS General Inquiry as in Item 3
- c. Same car types as in item 3
- d. Value Filter to derived values:
 1. Greater than 48 up to 119
 2. Greater than 120
- e. All holds codes
- f. Exclude cars in CMTL and M type cars

GRAIN METRICS 1 ITEM 7

- Equipment Type: Covered Hoppers

- Commodity is filtered on Sub Group Description: Domestic Grain; Export Grain (01xxxxx STCC Codes)
- Loaded, Revenue movements only, line haul waybills where KCS is the billing road
- Movement Type is Local or Movement Connect to Road is KCSM
- Report runs for prior 7 days, Sunday-Saturday.
- Shuttles are defined by having more than 50 cars on one revenue waybill; anything that is <=50 cars is defined as non-shuttle

GRAIN METRICS 2 ITEM 8

Outstanding Grain Orders

- Data Source: MCS
 - Active Car Orders
 - Exclude off-line car orders not served via haulage or reciprocal switch
 - Due to multi-date want dates wrapped into a single car order, metric will be manually calculated once data is downloaded from MCS.
 - Cancelled Car Orders are searched

GRAIN METRIC ITEM 9

SHUTTLE PERFORMANCE

Metric: Shuttle Train Cycle Time (Days)

Trip Plan: Same Month previous Year

Metric: Days to complete one load to empty placement

COAL METRICS Item 10

- No reporting based on no coal originations on KCSR

EP 724 - US RAIL SERVICE ISSUES - DATA COLLECTION

Railroad: KCS	Year: 2014	Reporting Week:	Date Week Began: 10/12/2014
			Date Week Ended: 10/18/2014

1. System-Average Train Speed by Train Type for the Reporting Week (MPH)

Intermodal	33.1
Grain unit	23.9
Coal unit	24.2
Automotive unit	No Auto Trains
Crude oil unit	Report in Other Category
Ethanol unit	Report in Other Category
Manifest	26.4
All Other	23.8

2. Weekly Average Terminal Dwell Time Measured in Hours Excluding Cars on Run Through Trains

System Average	23.2
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2. Weekly Average Terminal Dwell Time Measured in Hours for 10 Largest Terminals in Terms Of Railcar Capacity

1. Shreveport	34.5
2. Jackson	25.9
3. Kansas City	13.6
4. Laredo	32.8
5. Port Arthur	36.2
6. Wylie	22.8
7. Artesia	20.2
8. Heavener	11.5
9. Leesville	24.4
10. Baton Rouge	22.9

3. Total Cars On Line by Car Type for the Reporting Week

Box	3852
Covered hopper	9001
Gondola	2626
Intermodal	904
Multilevel (automotive)	419
Open hopper	2600
Tank	7571
Other	1281
Total	28254

EP 724 - US RAIL SERVICE ISSUES - DATA COLLECTION

Railroad: KCS	Year: 2014	Reporting Week:	Date Week Began: 10/12/2014
			Date Week Ended: 10/18/2014

4. Weekly Average Dwell Time at Origin for Unit Train Shipments Measured in Hours

Grain	28.0
Coal	-
Automotive	-
Crude Oil	-
Ethanol	-
All Other Unit Trains	18.7

5. Weekly Total Number of Trains Held Short of Destination or Scheduled Interchange for Longer than 6 Hours by Train Type and Cause

Train Type	Cause							Total
	Crew	Locomotive power	Track Maintenance	Mechanical Issue	Connecting Carriers	Congestion	Act of God	
Intermodal	2				6	2	3	13
Grain unit	5	1	2	1	21	16	1	47
Coal unit		1	2	1	8	13	1	26
Other unit	2		1		1	2	0	6
All other trains	4	2	4	2	49	33	6	100
Total	13	4	9	4	85	66	11	192

6. Weekly Total Number of Loaded and Empty Cars in Revenue Service That Have Not Moved In:

	Greater Than 120 Hours		Greater Than 48 but Less than or Equal to 120 Hours	
	Loaded	Empty	Loaded	Empty
Box	6	17	132	82
Covered hopper	9	34	184	225
Gondola	0	3	94	60
Intermodal	0	0	5	1
Multilevel (automotive)	0	0	0	1
Open hopper	10	17	1	0
Tank	159	202	6	13
Other	15	48	6	3

EP 724 - US RAIL SERVICE ISSUES - DATA COLLECTION

Railroad: KCS	Year: 2014	Reporting Week: 10/12/2014-10/18/2014	Date Week Began: 10/12/2014
			Date Week Ended: 10/18/2014

7. Weekly total grain cars loaded and billed, reported by State, aggregated for the following Standard Transportation Commodity Codes (STCCs): 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). "Total grain cars loaded and billed" includes cars in shuttle service; dedicated train service; reservation, lottery, open and other ordering systems; and, private cars. Additionally, please separately report the total cars loaded and billed in shuttle service (or dedicated train service) versus total cars loaded and billed in all other ordering systems, including private cars.

Instruction: Please enter "0" if no data is being reported for a field.

State	Total Grain Cars Loaded and Billed For All Ordering Systems	Total Grain Cars Loaded and Billed For Shuttle / Dedicated Train Service Ordering Systems	Total Grain Cars Loaded and Billed For Ordering Systems Other Than Shuttle / Dedicated Train Service
Total	1,024	820	204

EP 724 - US RAIL SERVICE ISSUES - DATA COLLECTION

<div> <div>Railroad: KCS</div> <div>Year: 2014</div> <div>Reporting Week:</div> </div>	<div> <div>Date Week Began:</div> <div>Date Week Ended:</div> </div>
<div> <div>10/12/2014</div> <div>10/18/2014</div> </div>	

N. For the aggregated STCCs in item 7, report by State the following: a. remaining total number of outstanding car orders (a car order equals one car); b. average number of days late for all outstanding car orders; c. total number of new car orders received during the past week; d. total number of car orders filled during the past week; and e. number of orders cancelled, respectively, by shipper and railroad during the past week.

State	a. Remaining Total Number of Outstanding Car Orders	b. Average Number of Days Late For All Outstanding Grain Car Orders	c. Number of New Car Orders	d. Number of Car Orders Filled	e.1. Number of Orders Cancelled By Shipper	e.2. Number of Orders Cancelled By Railroad
TOTAL	1,127	38	20	395	0	0

EP 724 - US RAIL SERVICE ISSUES - DATA COLLECTION

Railroad: KCS	Year: 2014	Reporting Week:	Date Week Began:	10/12/2014
			Date Week Ended:	10/18/2014

9. Plan vs. Performance For Grain Shuttle (Or Dedicated Grain Train) Round Trips, By Region, Updated To Reflect The Previous Four Weeks

Region (Please Specify Destination Region)	Trip Plan (Historical Average from Same Period Previous Year)	Trip Performance
Franchise	21 Days	24.5 Days

10. Average Daily Coal Unit Train Loadings vs. Plan for the Reporting Week By Coal Production Region

Region	Loadings Plan	Loadings Average
Powder River Basin	No Coal Loadings on KCSR Lines	
Illinois Basin		
Uinta Basin		
Northern Appalachia		
Central Appalachia		
Southern Appalachia		