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URGENT ISSUES IN FREIGHT RAIL SERVICE

COMMENTS OF OCCIDENTAL CHEMICAL CORPORATION

APRIL 27, 2022

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Good morning, Chairman Oberman, Vice Chairman Schultz, and Board Members Fuchs, Primus and Hedland. I am Karenanne Stegmann, Vice President of Supply Chain for Occidental Chemical Corporation, more commonly known as “OxyChem” or “Oxy”. I am here today to express Oxy’s concerns regarding the unacceptable status of freight rail service.

Oxy is a leading North American manufacturer of basic chemicals and vinyl resins, including chlorine, caustic soda, polyvinyl chloride (PVC) and potassium hydroxide (KOH). These chemicals are the building blocks for a range of products essential to public health and modern life. Our products are used to ensure clean drinking water in municipalities across the US, and in medical supplies, pharmaceuticals, construction materials and fertilizers which are vital to the United States economy. To provide more specific examples,

- 98% of US drinking water relies on chlorine for disinfection;
- 96% of crop-protection chemicals use chlorine in their manufacture;
- 85% of pharmaceuticals have chlorine as an integral part of their manufacturing;
- 70% of all disposable medical applications, including medical bags, tubing, and gloves are made from PVC;
- Caustic soda has a wide variety of applications in many industries, including pulp and paper, aluminum, textiles, petrochemicals and chemicals processing; and
- KOH has applications in fertilizers, batteries, and other industrial operations.

Oxy employs approximately 4,000 employees and contractors at 22 manufacturing facilities in North America.

We very much appreciate the ability to make comments during today’s hearing. In addition, we appreciate the assistance and support Oxy has received over the past several years through the Rail Customer and Public Assistance program. We fully recognize the past two

years have been extremely challenging in commerce as industry and businesses, including Oxy, navigated through the pandemic and its impacts. Unfortunately, rail transportation continues to be a significant challenge with no clear resolution or timeline for restoring reliable rail service. Our primary reasons for testifying today are, first, to reinforce how persistent rail service disruptions directly and negatively impact shippers like Oxy, and second, to advocate for potential solutions to resolve and prevent the widespread unacceptable service levels we are experiencing today from occurring again in the future.

Oxy averages over 50,000 rail shipments per year utilizing all seven Class I Railroads. Over the last several years we have watched the Railroads implement their own versions of precision scheduled railroading by altering their operating plans, reducing their workforces, repurposing lease tracks and classification yards, and reducing locomotive power. As a result of these unilateral Railroad actions, we have experienced significant increases in transit times, misrouted railcars, missed switches, and overall disruptions in rail service resulting in delayed deliveries to our customers, the need for emergency truck shipments, and reduced operating rates at our various facilities. We have also seen a reduction in resiliency of the rail network overall and the Railroads' collective ability to restore service to adequate levels following events like weather impacts, derailments or other disruptions. The end result, unfortunately, is extended periods of inadequate rail service and an inability to return to "normal" fluidity of the rail network.

Rail service issues continue to have a real impact on our ability to run our business and meet our customers' needs. Since January 1, 2022, four of our manufacturing facilities have reduced operating rates collectively by 58 days due to poor rail service. Currently, we are significantly impacted by Union Pacific-imposed rail shipment restrictions, which appear to be

applicable to a select group of large shippers like Oxy as opposed to being applied generally and equitably to shippers across the UP network. While we continue to communicate with the UP to avoid being placed on permit embargoes, we have been forced to balance shipments across our manufacturing facilities in response to UP-established maximum car counts. The current UP shipping restrictions are already having a detrimental impact on Oxy's business.

Another major area of concern for Oxy is the overall poor rail service and congestion in the Houston Area negatively impacting our traffic on the UP and the BNSF. For instance, we have experienced mishandling of railcars by the UP, resulting in additional miles and dwell time on shipments. In addition, we have seen congestion issues on the BNSF in the Houston Area resulting in First Mile/Last Mile service delays to and from our facility, resulting in significant strains on our private railcar fleet and delayed customer shipments.

Systemic failures around the New Orleans gateway have also resulted in disruptions to Oxy shipments. Over the last several years, even pre-COVID, we have seen increased transit time on traffic interchanging in New Orleans. Recent crew and equipment shortages are further compounding congestion, causing even longer transit times and resulting in late deliveries to our customers. For example, we have seen NS traffic received in New Orleans enroute to Jacksonville, Florida increase from an average transit time of 6.3 days in the first half of 2021 to 11.5 days in the first quarter of 2022, representing an astonishing 82% increase in transit time. Some of this increase is attributed to mishandled railcars that were interchanged to the wrong shortline railroad. Some other examples of excessive dwell time in New Orleans include:

- Three cars shipped from Houston on BNSF idled in New Orleans for 9 days before interchanging with NS to continue on to North Carolina.

- Seven cars interchanged to NS in New Orleans idled for 9 days due to congestion on NS in Birmingham backing up to New Orleans.
- Five railcars idled in Lafayette, LA for 7 days before being moved by BNSF after a case was opened.

In contrast, we have not experienced the same level of rail service deterioration on the KCS, as it appears they proactively increased both equipment and labor resources earlier in 2021 in preparation of servicing their customers' business requirements, including along the Gulf Coast. So, on a positive note, we would like to acknowledge the KCS for their customer focus and their approach to commercial and operational processes.

Our intent is not to complain to the Board, but rather to actively advocate for improvements and be a part of the solution. The Railroads need to provide the level of customer service that is required and, frankly, expected given the rates that are being charged. While they have admitted their service metrics aren't satisfactory, are they committed to learning from this process and preventing a repeat of the poor rail network issues we are currently experiencing? Along those lines, Oxy would like to highlight some of the proposals and concepts we believe would lead to rail service improvements impacting our traffic.

- First, we need the Railroads to take ownership for their aggressive reductions in equipment and labor resources that are resulting in their inability to serve their customers under their new operational models. In their planning processes, the Railroads should be required to consider scalability and responsiveness to shippers' increased business requirements. The reactionary rail environment that exists today is not acceptable, as it is negatively impacting shippers who are ultimately paying the price of poor service and shipment restrictions.

- Second, the Railroads should provide overall rail service restoration plans to the Board with defined timelines and milestones for implementation, including weekly reports from the Railroads about the progress they are making toward meeting their service objectives. In addition, we need successful execution of these action plans, and true accountability for missing service milestones. In today's environment, it is common for Railroads to communicate that network fluidity is "just around the corner," only for them to later report they have been unable to recover as quickly as expected.
- Third, we believe elements of EP-768, the proposed rule-making that would enable private railcar providers to assess charges to a railroad when private freight cars do not move for more than 72 consecutive hours, would incentivize the Railroads to perform by implementing a compensation mechanism where Railroads pay shippers for Railroad service failures, just as shippers are charged demurrage when we may be the cause of congestion on their networks. We believe the implementation of such reciprocal charges would redirect Railroads' focus from their operating ratios towards customer service.
- Finally, it is crucial that the Railroads dedicate appropriate resources to address congestion in New Orleans in the short term and implement infrastructure improvements to develop long-term fluidity through the New Orleans gateway. Likewise, the Railroads must dedicate appropriate resources to address congestion in the Houston Area to restore service and prepare for the increased volumes that are projected due to a combination of increased shipper demand and, to a greater

magnitude, planned increases of rail traffic by the rail industry – particularly in light of the proposed KCS/CP merger.

In closing, I would like to thank the Board for recognizing these persistent rail service issues and holding this hearing to facilitate the opportunity for constructive input. We look forward to the oversight from the Board to ensure the Railroads implement a customer-focused approach to unwind timely from these chronic rail service issues with additional focus on the New Orleans gateway and the Houston Area. While we look forward to an immediate solution to our rail service limitations, we are equally interested in ensuring that plans are in place to restore consistent rail service and network resiliency for the future.

Thank you, and I would be happy to answer any questions.