

SERVICE DATE – APRIL 1, 2020

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decision No. 9

Digest:¹ This decision adopts a jointly proposed procedural schedule and grants a joint request to appoint an administrative law judge to resolve any discovery disputes.

Decided: April 1, 2020

By petition filed on January 12, 2018, BNSF Railway Company (BNSF) requested that the Board establish conditions of use and compensation for BNSF to directly serve a LyondellBasell (Lyondell) facility at West Lake Charles, La., via terminal trackage rights granted by the Board in BNSF Railway—Terminal Trackage Rights—Kansas City Southern Railway (Decision No. 3), FD 32760 (Sub-No. 46) (STB served July 5, 2016). In Decision No. 3, the Board granted BNSF's application for terminal trackage rights over the Rosebluff Lead, a nine-mile single track jointly owned by Union Pacific Railroad Company (UP) and Kansas City Southern Railway Company (KCS). In BNSF Railway—Terminal Trackage Rights—Kansas City Southern Railway, FD 32760 (Sub-No. 46) (STB served Feb. 21, 2020), the Board established conditions for BNSF's use of the Rosebluff Lead to directly serve the Lyondell facility, set forth a procedure for setting compensation, and directed the parties to submit a joint procedural schedule to govern the remaining compensation issues.

On March 16, 2020, BNSF, UP, and KCS jointly filed a proposed procedural schedule and requested that the Board appoint an administrative law judge (ALJ) to resolve any discovery disputes.

The Board will grant the jointly proposed procedural schedule and assign an ALJ to resolve any discovery disputes. The Board has signed a Memorandum of Understanding with the Federal Mine Safety and Health Review Commission to employ the services of its ALJs on a case-by-case basis to perform discrete, Board-assigned functions, such as adjudicating discovery disputes between parties in cases pending before the Board. The Board hereby assigns and

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

authorizes Administrative Law Judge Thomas P. McCarthy to resolve all future disputes concerning discovery in this proceeding. The parties are directed to send copies of all future filings in this proceeding to Judge McCarthy at 1331 Pennsylvania Avenue, N.W., Washington, DC 20004-1710.

The procedural schedule will be as follows, although Judge McCarthy may adjust the discovery schedule at his discretion:

Event	Day
Simultaneous service of initial written discovery requests (motions to compel to be resolved by STB-appointed ALJ)	May 1, 2020
Discovery conference among ALJ and all parties	May 18, 2020
Last day for service of follow-up written discovery	July 30, 2020
End of written discovery period, final resolution of all discovery disputes	Sept. 28, 2020
Simultaneous filing of opening statements and evidence (including expert reports)	Jan. 26, 2021
Last day for submission of written discovery on opening statements and evidence	Feb. 16, 2021
Last day for depositions of experts	Mar. 12, 2021
Simultaneous filing of reply statements and evidence	Apr. 12, 2021
Simultaneous filing of rebuttal briefs (30-page limit inclusive of exhibits)	May 11, 2021

It is ordered:

1. The procedural schedule set forth above is adopted.
2. The Board hereby ratifies the loan of Thomas P. McCarthy to the office of administrative law judge in the Surface Transportation Board, under terms and conditions prescribed in 5 U.S.C. § 3344 and 5 C.F.R. § 930.208, and the Board today approves his appointment as the Board's own action under the Constitution. Judge McCarthy is assigned to handle all discovery matters and to resolve all discovery disputes in this proceeding.
3. Each party in this proceeding must send a copy of its filings to Judge Thomas P. McCarthy at 1331 Pennsylvania Avenue, N.W., Washington, DC 20004-1710.
4. Judge McCarthy will be added to the service list in this proceeding, and a copy of this decision will be served upon him.
5. A copy of this decision will be served on the U.S. Office of Personnel Management (OPM), at Human Resources Solutions, ALJ Program Office, 1900 E Street NW, Room 2458, Washington, DC 20414-9400. Judge McCarthy shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.

6. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.