

UP/SP-433

BEFORE THE
SURFACE TRANSPORTATION BOARD

301535

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

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

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**UNION PACIFIC RAILROAD COMPANY'S OPENING STATEMENT
REGARDING COMPENSATION FOR BNSF'S USE OF THE ROSEBLUFF LEAD**

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In Decision No. 8, the Board ordered BNSF, KCS, and UP “to submit a joint proposed procedural schedule to govern discovery and briefing on the calculation of compensation due to KCS” for BNSF’s use of the Rosebluff Lead to directly serve Lyondell’s facility at West Lake Charles, Louisiana, and to “conduct discovery and submit briefs detailing their positions.”¹ In accordance with those orders, UP joined with BNSF and KCS to submit a proposed procedural schedule and cooperated in responding to discovery conducted by BNSF and KCS. In this pleading, UP details its position regarding the calculation of compensation due to KCS.

UP believes the amount of compensation due to KCS is a matter between BNSF and KCS. UP therefore decided not to complicate this matter by submitting separate calculations. UP cooperated with BNSF and KCS to provide information those parties requested to develop their compensation calculations. UP reserves the right to reply to calculations submitted by BNSF and KCS.

¹ *BNSF Ry.—Terminal Trackage Rights—Kansas City S. Ry.*, FD 32760 (Sub-No. 46), slip op. at 16 (STB served Feb. 21, 2020).

As the Board observed in Decision No. 8, UP has stated that, if BNSF elects to serve Lyondell using terminal trackage rights obtained under 49 U.S.C. § 11102(a), BNSF should pay: (1) UP the trackage rights fee established in the UP/SP merger, *i.e.*, the Prescribed Fee, and (2) KCS any additional compensation to which KCS is entitled under § 11102(a).²

As the Board also observed in Decision No. 8, BNSF claims that UP is responsible for paying any compensation due to KCS above the Prescribed Fee.³ However, § 11102(a) requires the carrier granted use of terminal facilities to compensate the facilities' owner. The Board thus correctly recognized § 11102(a) required *BNSF* to compensate KCS when it granted BNSF rights to use certain KCS-owned terminal trackage in Shreveport, Louisiana, and Beaumont, Texas, in an earlier stage of the UP/SP merger proceeding.⁴ Section 11102(a) requires the same result here: if BNSF voluntarily accepts the benefits associated with the grant of terminal trackage rights, it must accept the obligations, including the obligation to compensate KCS.⁵

In Decision No. 8, the Board said its grant of terminal trackage rights over the Rosebluff Lead was unlike its grant of trackage rights over the Shreveport and Beaumont segments because operations over the Rosebluff Lead affect "two different line owners, each subject to a different

² *Id.* at 13.

³ *Id.* at 12.

⁴ See *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233, 449 (1996) ("Section [11102(a)] provides that the carriers are responsible for establishing the conditions and compensation applicable to terminal trackage rights awarded under [Section 11102], and we will therefore allow BNSF and KCS an opportunity to reach an agreement respecting such matters.").

⁵ The case for requiring BNSF to compensate KCS is even stronger here, because BNSF already has access to Lyondell through reciprocal switching, and the evidence in the record shows it does not need trackage rights to compete effectively with UP. See *Union Pacific Railroad Company's Reply to BNSF's Petition to Establish Conditions of Use and Compensation* at 2, 61 (June 25, 2018).

compensation scheme.”⁶ UP believes the Prescribed Fee is *below* the amount to which UP would be entitled under the *SSW Compensation* methodology or any appropriate compensation methodology based on its 50% ownership interest in the Rosebluff Lead.⁷ Therefore, a Board order requiring BNSF to pay KCS a § 11102(a) terminal trackage rights fee based on KCS’s 50% ownership interest in the Lead *plus* the Prescribed Fee would *not* result in BNSF paying more to KCS and UP, collectively, than if KCS owned a 100% interest in the trackage at issue (as KCS does in Shreveport and Beaumont). However, to eliminate even the theoretical possibility that BNSF could be required to pay KCS and UP, collectively, more than it would be required to pay KCS if KCS owned 100% of the Lead, UP will agree to waive BNSF’s obligation to pay the Prescribed Fee for use of the Lead when BNSF operates its own trains directly to Lyondell.

Respectfully submitted,

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⁶ Decision No. 8, slip op. at 15.

⁷ Under the Prescribed Fee, BNSF would owe UP approximately \$3.36 per car for a loaded and empty movement over the Rosebluff Lead to and from Lyondell, assuming a 4-mile move each way of a 25-car train with a single locomotive and an average of 130 tons per loaded car and 33 tons per empty car, at a rate of 4.7 mills per ton mile.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2021, I caused a copy of the foregoing document to be served by email or first-class mail, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 46).

/s/ Michael L. Rosenthal