

SERVICE DATE – NOVEMBER 28, 2023

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. 11

Digest:¹ Due to an apparent error in the parties' evidence regarding the proposed methods for determining compensation for BNSF Railway Company's terminal trackage rights over the Rosebluff Lead, the Board orders the parties to submit supplemental analysis and data.

Decided: November 28, 2023

By decision served on July 5, 2016, the Board granted BNSF Railway Company (BNSF) terminal trackage rights over the Rosebluff Lead, a single track, approximately nine miles in length, jointly owned by Kansas City Southern Railway Company (KCS)² and Union Pacific Railroad Company in the Lake Charles area of Louisiana. BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry. (Decision No. 3), FD 32760 (Sub-No. 46) (STB served July 5, 2016). In a subsequent decision, the Board, pursuant to 49 U.S.C. § 11102(a), established conditions of use for BNSF to directly serve a LyondellBasell (Lyondell) facility at West Lake Charles, La., and set forth a procedure for setting compensation. BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry. (Decision No. 8), FD 32760 (Sub-No. 46) (STB served Feb. 21, 2020).

Pursuant to the procedural schedule approved by the Board in BNSF Railway—Terminal Trackage Rights—Kansas City Southern Railway (Decision No. 9), FD 32760 (Sub-No. 46) (STB served Apr. 1, 2020), the parties have completed briefing regarding the compensation due to KCS, including the submission of expert reports and evidence. In the course of reviewing the parties' filings and workpapers, the Board has identified an apparent error in certain data submitted by KCS and its expert Dr. Kevin Neels. The data suggests negative KCS earnings from the Rosebluff Lead, which appears to be neither consistent with the record, nor supported

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 Pol'y Statement on Plain Language Digs. in Decision, EP 696 (STB served Sept. 2, 2010).

² In March 2023, the Board approved the acquisition of control of KCS by Canadian Pacific Railway (CP), resulting in a newly merged entity, Canadian Pacific Kansas City Limited. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al. (STB served Mar. 15, 2023).

by the parties' workpapers. The Board has not yet made a determination as to what compensation approach to use in this proceeding. As discussed further below, however, an accurate version of the data is needed to consider whether the Board should use the "capitalized earnings" (CE) method for calculating interest rental, which is KCS's preferred approach if the agency elects to use its longstanding "SSW Compensation" methodology for computing trackage-rights compensation. See Decision No. 8, FD 32760 (Sub-No. 46), slip op. at 11-12 (discussing SSW Compensation); (KCS Opening Statement on Comp. 3-4, 8-11, Jan. 26, 2021 (KCS Opening) (advocating a non-SSW Compensation approach of KCS's own design, or in the alternative, SSW Compensation methodology using CE to calculate interest rental)). Using KCS's apparently erroneous data, however, would appear to reduce any potential compensation to KCS under the CE method. In order to fully and more accurately evaluate all parties' proposed methods for determining compensation, the Board will give KCS the opportunity to submit, by January 12, 2024, supplemental analysis and data, including workpapers, for its line-segment earnings calculations, consistent with this decision. In addition, KCS may provide an explanation, with supporting workpapers, for how the Board may be mistaken regarding the apparent error in KCS's earnings data. If supplemental analysis and data is submitted, BNSF and UP will have until February 12, 2024, to supplement or correct their compensation calculations accordingly. KCS will have until February 26, 2024, to file a supplemental rebuttal.

BACKGROUND³

This sub-docketed proceeding arises out of the 1996 merger between the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) (collectively, UP) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company) (collectively, SP). See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (UP/SP Decision No. 44), 1 S.T.B. 233, 241 (1996). In approving the merger, the Board imposed numerous conditions, among which was BNSF's right to handle certain traffic of Lake Charles area shippers either via "direct" or "reciprocal switch" access. See UP/SP Decision No. 44, 1 S.T.B. at 427-29; Decision No. 3, FD 32760 (Sub-No. 46), slip op. at 2-3, 9-10; see also Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (UP/SP Decision No. 63), FD 32760, slip op. at 8 (STB served Dec. 4, 1996) (denying KCS's petition to reopen or reconsider UP/SP Decision No. 44 to remove the Lake Charles Merger Conditions).

In February 2013, after serving Lake Charles-area shippers via reciprocal switching by UP for nearly two decades, BNSF sought direct access by filing a terminal trackage rights application and initiating this subdocket. In 2016, the Board granted BNSF terminal trackage

³ The Background here summarizes only the facts and arguments relevant to the present decision. For more details on the history of this proceeding, see BNSF Railway—Terminal Trackage Rights—Kansas City Southern Railway (Decision No. 10), FD 32760 (Sub-No. 46), slip op. at 1-5 (STB served Apr. 13, 2022).

rights over the Rosebluff Lead.⁴ When the parties could not agree on the conditions and compensation for BNSF's use of the Rosebluff Lead, the Board, in accordance with 49 U.S.C. § 11102(a), established conditions for BNSF's use of the Lead to directly serve the Lyondell facility. See Decision No. 8, FD 32760 (Sub-No. 46), slip op. at 8-11.

Decision No. 8 also set forth a framework for the Board's compensation analysis. See Decision No. 8, FD 32760 (Sub-No. 46), slip op. at 11-17. The Board explained that the SSW Compensation methodology "has consistently been used by the Board for setting trackage rights compensation" under § 11102(a), including in cases where trackage rights are imposed as a merger condition. Id. at 11-12. The SSW Compensation methodology involves calculating the sum of three elements: (1) the variable cost incurred by the owning carrier due to the tenant carrier's operations over the owning carrier's track; (2) the tenant carrier's usage-proportionate share of the track's maintenance and operation expenses; and (3) an interest rental component designed to compensate the owning carrier for the tenant carrier's use of the owning carrier's capital dedicated to the track. Id.; Burlington N. Inc.—Control & Merger—Santa Fe Pac. Corp. (BN/SF Decision No. 38), 10 I.C.C.2d 661, 770 n.118 (1995). Historically, the most contentious element has been the interest rental component, which may be computed in several different ways to reflect a fair valuation base for the property. Decision No. 8, FD 32760 (Sub-No. 46), slip op. at 11-12 & n.18 (and cases cited therein).

The Board further noted that "[t]his case presents unique circumstances regarding the interplay between the Board's merger conditions in UP/SP and § 11102(a)." Id. at 15. As all parties recognized, KCS is entitled to compensation under § 11102(a)—typically calculated using SSW Compensation methodology—while UP's compensation is limited to a below-SSW Compensation rate set by the UP/SP merger conditions (at UP and BNSF's specific request). Id. at 11-12, 15. Although the parties disputed how KCS's compensation should be allocated and paid, Decision No. 8 did not reach that question because all parties agreed that the amount of KCS's compensation could not be calculated without further proceedings. Id. at 12-15. The decision thus provided a period for further record development, based on an application of the merger conditions and the principles controlling compensation in condemnation proceedings, including SSW Compensation. Id. at 15-17; see also Decision No. 9, FD 32760 (Sub-No. 46), slip op. at 2 (approving the parties' joint proposed procedural schedule).

The parties have submitted briefing on compensation pursuant to Decision Nos. 8 and 9. Although the parties' filings reiterate many of their prior arguments (discussed in Decision No. 8, FD 32760 (Sub-No. 46), slip op. at 12-15), BNSF and KCS also submit compensation calculations supported by the verified statements and workpapers of several expert witnesses.

⁴ See Decision No. 3, FD 32760 (Sub-No. 46), slip op. at 9-18 (concluding that the requested terminal trackage rights met the requirements of 49 U.S.C. § 11102(a) and were necessary to effectuate the merger's competition-preserving conditions); see also BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry., FD 32760 (Sub-No. 46), slip op. at 5-7 (STB served May 4, 2018) (clarifying that BNSF's trackage rights applied to all customers accessible via the Rosebluff Lead and covered by the Lake Charles Merger conditions, including the Lyondell facility at West Lake Charles).

As relevant here, BNSF maintains that the level of compensation that BNSF must pay was conclusively established in UP/SP Decision No. 44 as the “Prescribed Fee,” the trackage rights fee imposed by the Board’s UP/SP merger conditions.⁵ BNSF argues that UP should be responsible for any compensation due to KCS beyond the Prescribed Fee. (BNSF Opening 8-11.) For purposes of calculating the compensation owed to KCS by UP, BNSF asks the Board to apply “SSW Compensation principles” and set a fee based on: (1) how BNSF’s current movements via reciprocal switching are treated under existing UP-KCS cost-sharing agreements in effect for the Rosebluff Lead or, alternatively, (2) more traditional calculations under SSW Compensation methodology. (*Id.* at 15-24.) BNSF’s SSW Compensation approach is set forth by its expert Michael R. Baranowski, who uses the “reproduction cost new less depreciation” (RCNLD) method to compute the interest rental component. (*Id.* at 17-24; *id.*, Ex. A, Baranowski Opening V.S. 3-4, 18-19.)

UP argues that BNSF is responsible for any compensation due to KCS and declines to submit any calculations, asserting that the amount of compensation due to KCS is a matter to be resolved between BNSF and KCS. (UP Opening Statement on Comp. 1, Jan. 26, 2021.) UP’s position is that if BNSF elects to use the terminal trackage rights granted by the Board 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).” (*Id.* at 2.)

KCS maintains that SSW Compensation methodology is inconsistent with condemnation principles and insufficient to fully compensate KCS, advocating instead for a “Market-Based Access Fee” devised by its expert Professor Julie Carey’s review of rates in similarly situated markets. (KCS Opening 3-4, 31-33.) However, recognizing the agency’s longstanding application of SSW Compensation in trackage rights cases, (*id.* at 3), KCS alternatively submits SSW Compensation-based calculations by another expert, Dr. Kevin Neels. (*Id.* at 3-4, 8-11.) Neels states that he uses the “capitalized earnings” (CE) method to compute interest rental because, as KCS explains, “the Board has expressed preference for this methodology in prior cases because CE best values the asset as a going-concern business with income-producing potential.” (*Id.* at 4 n.5; *see also id.* at 8 n.14 (citing cases).) In his calculations, Neels first allocates revenues for each movement (between the Lead and the rest of the movement) using the Board’s Average Total Cost (ATC) methodology. (*Id.*, Ex. A, Neels Opening V.S. 15-17, 25-31 (also discussing Neels’s use of “the Brattle [Group’s] rail network model” to identify segments used by each movement).) Neels next computes the “contribution” (i.e., the difference between revenue and variable costs) associated with what he deems the relevant portion of the Rosebluff Lead. He treats that “contribution” as earnings, rather than computing actual earnings (i.e., the difference between revenue and *all* costs, both variable and fixed). (*Id.* at 8-9; *id.*, Ex. A, Neels Opening V.S. 31-33 (emphasis added).) Then, he multiplies the contribution by an

⁵ (BNSF Opening Statement on Comp. 5-6, Jan. 26, 2021 (BNSF Opening).) The Prescribed Fee is currently set by Section 9(a), as escalated by Section 12, of the Restated & Amended BNSF Agreement, as modified by BNSF and UP in Section 7 of their subsequent 50/50 Line Agreement and related amendments. (*Id.* at 6); Decision No. 8, FD 32760 (Sub-No. 46), slip op. at 12 & n.19.

enterprise-value-based multiplier, to arrive at the approximate line value for his selected portion of the Rosebluff Lead. (*Id.*, Ex. A, Neels Opening V.S. 34-37, 39.)

In responsive filings, the parties offer various critiques and adjustments to the proffered methodologies for calculating compensation. As relevant here, Baranowski criticizes Neels for failing to deduct an allocation of fixed costs from the revenues that he attributes to the Rosebluff Lead, resulting in an allegedly improper calculation of “earnings” under agency precedent. (BNSF Reply Statement on Comp. 21, Apr. 12, 2021 (BNSF Reply); *id.*, Ex. A, Baranowski Reply V.S. 19-20.) Baranowski further argues that the failure to account for fixed costs contradicts Neels’s later description of his proposed enterprise-value multiplier and results in a capitalized contribution (CC) approach, rather than a capitalized earnings (CE) approach. (BNSF Reply, Ex. A, Baranowski Reply V.S. 19-20.) To reconcile Neels’s calculations with Neels’s description of CE, Baranowski states that he deducts from allocated revenues the allocation of fixed costs that Neels ascribes to the Rosebluff Lead. (*Id.*, Ex. A, Baranowski Reply V.S. 20.) Notably, however, Baranowski does not adjust Neels’s valuation multiplier. (*Id.*) Moreover, Baranowski acknowledges that his adjustments to Neels’s CE calculations begin from Neels’s Rosebluff Lead revenue allocations, even though those were developed from the proprietary “Brattle rail network model” that KCS declined to produce absent execution of a nondisclosure agreement to which Baranowski did not agree. (*Id.*, Ex. A, Baranowski Reply V.S. 15.) On rebuttal, Neels contests Baranowski’s purported correction to Neels’s CE calculations, arguing that it is internally inconsistent because it combines a figure based on “earnings” with a valuation multiplier derived from “contribution.” (KCS Rebuttal Statement on Comp. 9, May 11, 2021 (KCS Rebuttal); *id.*, Neels Rebuttal V.S. 2-3.)

DISCUSSION AND CONCLUSIONS

As discussed in Decision No. 8, the Board has historically applied SSW Compensation methodology to set trackage rights compensation under § 11102(a). Decision No. 8, FD 32760 (Sub-No. 46), slip op. at 11-12. In the SSW Compensation cases, the agency concluded that where it prescribes trackage rights as a merger condition, the terms should permit competitive entry by providing for a reasonable return on the fair market value of the property. Otherwise, the tenant carrier would be placed at a competitive advantage by dispensing with any requirement of investing in the fixed facilities it is using. BN/SF Decision No. 38, 10 I.C.C.2d at 772. In cases like this one, involving Class I carriers, the Board has accepted four different methods of determining the appropriate valuation base for the interest rental component: (a) capitalized earnings (CE) (also known as going concern value, or GCV), (b) reproduction cost new less depreciation (RCNLD), (c) comparable lines method, and (d) stand-alone cost (SAC). See Atchison, Topeka & Santa Fe Ry.—Operating Agreement—S. Pac. Transp., 8 I.C.C.2d 297, 304-05 (1992); New England Cent. R.R.—Trackage Rts. Ord.—Pan Am S. LLC, FD 35842, slip op. at 3 (STB served Oct. 31, 2017); BN/SF Decision No. 38, 10 I.C.C.2d at 770 n.118. The agency has stated that its preferred method for calculating interest rental is the CE

method, because, among other things, it values the property as a going concern for railroad use—i.e., the use to which the property will actually be put.⁶

To calculate the interest rental component using the CE approach, the line owner's (or owners') earnings for the subject line segment are calculated and then multiplied by an earnings multiplier to arrive at the approximate line value of the segment. See St. Louis S.W. Ry.—Trackage Rts. over Mo. Pac. R.R.—Kan. City to St. Louis (SSW Compensation II), 4 I.C.C.2d 668, 671 (1987). Traditionally, revenues and costs are developed (or allocated) to determine the earnings for traffic moving over a particular line segment. See St. Louis S.W. Ry.—Trackage Rts. over Mo. Pac. R.R.—Kan. City to St. Louis (SSW Compensation I), 1 I.C.C.2d 776, 780 (1984). This requires identifying the revenue attributable to the segment at issue (here, the Rosebluff Lead), as isolated from that attributable to the larger movement over which the traffic moves. Next, costs are developed to calculate line segment earnings.

As KCS's expert Neels acknowledges, a current, generally accepted way to allocate revenues is by using the ATC methodology,⁷ which the Board initially developed for use in rate reasonableness cases, in particular those brought under SAC methodology, see Major Issues in Rail Rate Cases in Decisions, EP 657 (Sub No. 1), slip op. at 1, 24-39 (STB served Oct. 30, 2006), and has been endorsed in the context of calculating trackage-rights compensation, see, e.g., New England Cent. R.R., FD 35842, slip op. at 15-16; (New England Cent. R.R., FD 35842, Pan Am Southern Reply, Ex. B, Baranowski V.S. 33-40 (filed July 19, 2016); and Pan Am Southern Surrebuttal, Baranowski Supp. V.S. 18-22 (filed Feb. 22, 2017)).⁸ In general, the ATC methodology considers both variable and fixed costs, along with traffic density, to allocate revenues over portions of a railroad's lines. See, e.g., Major Issues in Rail Rate Cases in Decisions, EP 657 (Sub No. 1), slip op. at 26, 34-35 (STB served Oct. 30, 2006) (discussing how both variable and fixed costs are used to establish the average total cost to own and operate a particular segment); (KCS Opening, Ex. A, Neels Opening V.S. 16-17, 25 (same)).

Here, Neels states that he uses the CE method to value the Lead under SSW Compensation and ATC methodology (including an "input" for fixed costs) to compute the revenue generated by the Lead. (KCS Opening, Ex. A, Neels Opening V.S. 16-17, 25.) However, rather than deriving earnings, as is typical for a "capitalized earnings" approach, Neels instead calculates "contribution" (revenue minus only *variable* costs). (Id. at 8-9 & Ex. A, Neels Opening V.S. 31-33; KCS Rebuttal, Neels Rebuttal V.S. 2-3.) KCS's Opening Statement suggests that Neels uses contribution in order to be "reflective of current market conditions,

⁶ CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., 3 S.T.B. 955, 963 n.17 (1998); Atchison, Topeka & Santa Fe Ry., 8 I.C.C.2d at 304; see also BN/SF Decision No. 38, 10 I.C.C.2d at 772 n.120 ("In determining fair market value we have preferred the 'capitalized earnings' approach, and used it where circumstances allowed.").

⁷ (See KCS Opening, Ex. A, Neels Opening V.S. 16-17, 25-33.)

⁸ ATC methodology was further refined in Rate Regulation Reforms, EP 715, slip op. at 28-34 (STB served July 18, 2013), in order to ensure that revenues are not allocated below any segment's variable costs.

including the competitive presence of BNSF” because “KCS’s and UP’s earnings are actually lower than they otherwise would be if not for the presence of BNSF.” (KCS Opening 9 n.17.)

Upon preliminary review by the Board, the data submitted by KCS suggests that KCS’s earnings on the full Rosebluff Lead were negative under the traditional CE approach. In other words, the data in the record appears to indicate that KCS earned less revenue than its total costs, unlike UP (a co-owner of the Lead), which generated a sizable net profit. This anomaly concerns the Board and suggests possible errors in the line-segment analysis produced by Neels, for a number of reasons. First, the Rosebluff Lead traffic is highly rated and would not be expected to produce a net loss; indeed, for UP, it does not.⁹ In addition, the KCS data submitted by Neels does not appear consistent with KCS’s R-1 data filed publicly with the Board. Compare KCS’s 2018 R-1 Report, Schedule 210, available at <https://www.stb.gov/reports-data/economic-data/annual-report-financial-data/> (last visited Nov. 17, 2023), with KCS Opening, Neels Workpapers, NEELS-WP-HC-0039.xlsx, sheet titled “Contributions” (showing that KCS’s 2017 and 2018 R-1 figures for Net Revenue, which are calculated as revenue minus variable and fixed costs, are *higher than* Neels’s 2017 and 2018 “contribution” figures, which are calculated as revenue minus only variable costs).

It is not only KCS that relies on this potentially faulty data, as BNSF’s expert Baranowski offers adjustments to Neels’s CE calculations. But Baranowski’s relevant “correction” simply deducts fixed costs from Neels’s contribution figures. (BNSF Reply 21 & Ex. A, Baranowski Reply V.S. 19-20.) It does not acknowledge or account for the fact that doing so results in the anomaly noted above—negative earnings for KCS on the Lead—an issue that becomes masked when KCS’s smaller negative earnings are added to UP’s substantial positive earnings (resulting in a net positive) for purposes of developing the valuation base for the Lead as a whole.

In sum, the line-segment data produced by KCS/Neels appears to be erroneous, particularly with respect to how revenues have been allocated and/or how total costs have been calculated. Moreover, if the Board were to use the data as currently submitted (resulting in KCS’s negative earnings on the Lead as a whole), it would likely reduce the overall compensation to which KCS would be entitled under the CE method, by lowering the interest rental component reflecting the Lead’s valuation.¹⁰ In order to fully evaluate all parties’ proposed methods for determining compensation, and to ensure fairness to KCS, the Board orders the parties to provide supplemental analysis and data, including workpapers, on the following items:

⁹ (See BNSF Reply, Ex. A, Baranowski Reply V.S., at workpaper entitled “CWS Analysis” (showing a sizable amount of KCS Lake Charles traffic with Revenue to Variable Cost (R/VC) ratios above 180%).) This data set also shows that the weighted-average R/VC ratio for every year but one is above KCS’s URCS Constant Cost Markup Ratio, which is the markup applied to variable costs to account for fixed costs, to derive the fully allocated cost of service for the movement.

¹⁰ Since line segment earnings are multiplied by the multiplier to develop the value of the segment, any suppression of those earnings could lead to lower valuation.

A. How revenues were allocated between segments (Rosebluff Lead and the rest of the movement) and how the Board's preferred revenue allocation methodology, ATC, was applied.

B. How fixed costs per ton were allocated based on density pursuant to how ATC has been traditionally calculated. At present, the record contains no workpaper clearly showing, on a movement basis, the respective variable and fixed costs used to calculate the allocation of revenues. For example, in the most recent case where the Board set fees using the SSW Compensation methodology, BNSF's witness Baranowski, on behalf of Pan Am Southern, allocated New England Central Railroad's fixed costs based on density to develop ATC allocations. BNSF Reply, Ex. B, Baranowski V.S. 33-37 (July 19, 2016), New England Cent. R.R., FD 35842 (adopted by the Board in New England Cent. R.R., FD 35842, slip op. at 15-17).

C. How variable and fixed costs were developed to calculate the net revenues for the line segment earnings using the Board's Uniform Rail Costing System (URCS). At present, the record contains no workpaper clearly showing how net revenues and costs were calculated on a lane-by-lane basis and whether adjustments were made based on how Board has accepted line-segment earnings in past cases. For example, in the line segment earnings adopted by the Board in CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., 4 S.T.B. 75, 84 (1999), CP's witness made adjustments to total costs to reflect that those costs had been accounted for in other parts of the SSW calculations, Canadian Pac. Ry. Reply, Plaistow V.S. 8-11 & Ex. No. JJP-2.4 at 1-2 (Dec. 10, 1998), CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., FD 33388.

In addition, in the event the Board's preliminary analysis of KCS's data is mistaken, KCS may provide an explanation, with supporting workpapers, showing how its data would not produce anomalies or inconsistencies if the CE methodology were applied.

When filing workpapers, the parties should follow the procedures for the format of evidence as outlined in the Board's decision in Consumers Energy Co. v. CSX Transportation, Inc., NOR 42142, slip op. at Appendix (STB served July 15, 2015).¹¹

It is ordered:

1. KCS shall submit supplemental analysis and data, including workpapers, for its line-segment earnings calculations in accordance with the direction in this decision by January 12, 2024.
2. BNSF and UP may file a reply to KCS's evidence by February 12, 2024.
3. KCS may submit a rebuttal by February 26, 2024.

¹¹ While the guidance in Consumers Energy Co. applies to the presentation of evidence in a rate reasonableness case, the decision outlines how evidence involving traffic data and the calculation of ATC should be presented to the Board.

4. This decision is effective on the date of service.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.