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December 14, 2023

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VIA E-FILING

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

ENTERED
Office of Proceedings
December 14, 2023
Part of
Public Record

Re: BNSF Railway Company – Terminal Trackage Rights – The Kansas City Southern
Railway Company And Union Pacific Railroad Company,
FD 32760 (Sub-No. 46)

Dear Ms. Brown:

On behalf of The Kansas City Southern Railway Company (“KCS”), the undersigned hereby submits to the Surface Transportation Board (STB” or “Board”) KCS’s Petition for Technical Conference in the above-referenced proceeding. If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com. If I am unavailable, you may contact Lauren L. Edwards by telephone at (202) 663-7826 or by e-mail at ledwards@bakerandmiller.com.

Sincerely,

/s/ William A. Mullins

William A. Mullins

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

KCS'S PETITION FOR TECHNICAL CONFERENCE

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**Attorneys for The Kansas City Southern
Railway Company**

December 14, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

KCS'S PETITION FOR TECHNICAL CONFERENCE

In a Decision served on November 28, 2023, the Board ordered the Parties to this proceeding to submit supplemental analysis and data due to a perceived error in the evidence regarding the proper methods for determining compensation for BNSF Railway Company's ("BNSF") terminal trackage rights over the Rosebluff Lead. Pursuant to 49 C.F.R. Part 1117.1, The Kansas City Southern Railway Company ("KCS") is filing this Petition for Technical Conference ("Petition") requesting that the Board schedule a staff-supervised technical conference to clarify the exact issues the Board has with the evidence submitted by KCS and its expert Dr. Kevin Neels.¹ The conference is necessary to ensure that KCS can adequately address these concerns and make certain that the Board has a full and complete record when making its decision on which compensation methodology is most appropriate to use in this proceeding. Additionally, KCS respectfully requests that the Board modify its procedural schedule to allow

¹ Given that the data at issue was designated Highly Confidential pursuant to the Protective Order issued in this case, the conference should be limited to Outside Counsel and Outside Consultants only. KCS has no objection to participation by Outside Counsel and Outside Consultants for any other party of record in this proceeding that has signed the Protective Order.

comments to be filed thirty (30) days after the technical conference takes place, thus amending the subsequent dates of the schedule to reflect the addition of the technical conference.² A technical conference would allow KCS and the Board to pose specific questions and obtain a common understanding about where are the discrepancies that the Board perceives in the evidence that “suggests negative KCS earnings from the Rosebluff Lead.”³

This proceeding began in 2014 and the Board has devoted significant time and effort into investigating the matter thoroughly and trying to develop a fully complete record. Given the efforts of all parties involved in developing and analyzing the intricacies of the evidence presented, it would benefit all parties, the Board, and the overall public interest to hold a technical conference to hash out any confusion. A technical conference will help all parties, including the Board, move towards a resolution on the appropriate compensation process. It could also potentially serve as another vehicle by which the parties could come together on a general understanding of the evidence so as to facilitate settlement. It would be disadvantageous to invest so much effort to have to now proceed without fully understanding the scope and ask of the Board, and it would prevent KCS and its experts from adequately addressing the perceived data discrepancies so as to present a fulsome analytical analysis to the Board. The compensation component of this long proceeding is complex and raises a whole host of technical and policy

² See Otter Tail Power Co. v. The Burlington Northern and Santa Fe Railway Co., FD 42071 (STB Served Nov. 21, 2003) (modifying the procedural schedule to provide for a technical conference with the Board to address issues in the case).

³ BNSF Ry. – Terminal Trackage RTS. – Kan. City S. Ry. (Decision No. 11), FD 32760 (Sub-No. 46) (STB served Nov. 28, 2023).

issues. A technical conference will allow the Board to fulfill its obligation to develop a complete regulatory record for review and analysis.⁴

A technical conference will allow the Board to easily facilitate the understanding of the issues at hand and move the proceeding along as expeditiously as possible. By clarifying the requests and issues at hand now, the parties can proceed with a more fully developed record without the need to postpone the proceeding again down the line as a result of what could be an incomplete analysis due to misunderstanding the asks of the Board. Granting the Petition will allow KCS personnel and its outside consultants to confer with the Board and request guidance so that the most appropriate measures and methodologies can be implemented.

For the foregoing reasons, KCS respectfully requests that the Board schedule a technical conference for January 2024 and modify the procedural schedule to include the technical conference and additional time to comment.

Dated: December 14, 2023

Sincerely,

/s/ ***William A. Mullins***

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

⁴ See Review of Commodity, Boxcar, and TOFC/COFC Exemptions, EP 704 (Sub-No.1) (STB Served Nov. 25, 2020) (granting request for a technical conference to better understand how the proposal of the interested parties is intended to work).