

SERVICE DATE – JANUARY 10, 2024

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. 12

Decided: January 10, 2024

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) and Union Pacific Railroad Company (UP) 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 for BNSF’s use of the Rosebluff Lead. 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 reviewing the parties’ filings and workpapers, the Board identified an apparent error in certain data related to line-segment earnings calculations submitted by KCS and its expert Dr. Kevin Neels. By decision served November 28, 2023, the Board ordered parties to provide supplemental analysis and data, including workpapers, on several specified items to address this apparent error. BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry. (Decision No. 11), FD 32760 (Sub-No. 46), slip op. at 7-8 (STB served Nov. 28, 2023).

By petition filed on December 14, 2023, KCS requests “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.” (KCS Pet. 1.)¹ Although KCS suggests that it does not “fully understand[] the scope and ask of the Board,” (*id.* at 2), it does not explain

¹ KCS notes that, because 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 Pet. 1 n.1.)

which aspects of Decision No. 11 are unclear, nor does it propose specific questions or topics for the Board to clarify. UP and BNSF, in replies filed on December 20, 2023, and December 21, 2023, respectively, state that they do not oppose KCS's request for a technical conference.²

To ensure that KCS (and the other parties) are better able to provide timely and accurate responses to the issues raised in Decision No. 11, KCS's petition will be granted and a Board staff-supervised technical conference will be held. To facilitate a productive technical conference, KCS is ordered to file with the Board, by January 24, 2024, a list of specific technical questions that it seeks to discuss at the technical conference. UP and BNSF may also submit technical questions they would like to discuss, if any, by January 24, 2024. All parties are reminded that discussion at the conference will be limited to technical issues regarding the requirements for the submissions ordered in Decision No. 11 and will not address the merits of any compensation issues. The date for the technical conference will be set in a subsequent decision. The deadlines set forth in Decision No. 11 will be held in abeyance until further Board order.

It is ordered:

1. KCS's request for a staff-supervised technical conference, limited to outside counsel and outside consultants only, is granted.
2. KCS shall submit a list of specific technical questions that it seeks to discuss at the technical conference by January 24, 2024.
3. UP and BNSF may also submit specific technical questions that they would like to discuss, if any, by January 24, 2024.
4. The deadlines set forth in Decision No. 11 are held in abeyance until further Board order.
5. This decision is effective on the date of service.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

² By reply filed on December 22, 2023, Lyondell Chemical Company, Equistar Chemicals, LP, and LyondellBasell Acetyls state that they are not parties to this proceeding and do not oppose KCS's request.