

MULLINS LAW GROUP PLLC

Transportation Solutions for the 21st Century

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PUBLIC VERSION

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

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ENTERED
Office of Proceedings
January 24, 2024
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:

In a Decision served on November 28, 2023 (“November Decision”), the Surface Transportation Board (“STB” or “Board”) offered Union Pacific Railroad Company (“UP”), BNSF Railway Company (“BNSF”), and The Kansas City Southern Railway Company (“KCS”)(collectively, the “Parties”) to submit supplemental analysis and data due to what the Board saw was an apparent error in the evidence regarding the proper methods for determining compensation for BNSF’s terminal trackage rights over the Rosebluff Lead. Pursuant to 49 C.F.R. Part 1117.1, KCS filed a Petition for Technical Conference (“Petition”) requesting that the Board schedule a staff-supervised technical conference to clarify the specific concerns that the Board has with the evidence submitted by KCS and its expert Dr. Kevin Neels. By decision dated January 10, 2024, the Board granted the Petition (“January Decision”).

The January Decision ordered KCS to file with the Board by January 24, 2024 a list of specific technical questions KCS would like to discuss at the technical conference. UP and BNSF also were offered the opportunity to submit specific technical questions if they so desired. KCS hereby submits the following questions in response to the January Decision.

1. In its November Decision the Board states:

Compare KCS’s 2018 R-1 Report, Schedule 210, available at <https://www.stb.gov/reports-data/economicdata/annual-report-financial-data/> (last visited Nov. 17, 2023), with KCS Opening, Neels Workpapers, NEELS-WP-HC-

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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).

November Decision at 7. Please confirm that “Net Revenue” in the above statement refers to the figures of \$392,964,000 for 2017 and \$438,397,000 for 2018, as shown in line 15 of Schedule 210. Please confirm that “contribution” in the above statement refers to the figures of [REDACTED] for 2017 and [REDACTED] shown in column [7]¹ of the Contributions tab of the spreadsheet NEELS-WP-HC-0039.xlsx. If not confirmed, please identify the specific numbers referred to in the above statement.

2. In its November Decision the Board states:

The data suggests negative KCS earnings from the Rosebluff Lead, which appears to be neither consistent with the record, nor supported by the parties’ workpapers.

November Decision at 1-2. In the above statement:

- a. Which specific revenue data are being considered in computing earnings?
- b. Which specific cost data are being considered in computing earnings?

More generally, please explain in full the basis for the referenced statement, including references to specific workpapers or other sources.

3. Please confirm that under the Board’s Average Total Cost (ATC) method that the fixed cost associated with a segment would be computed by calculating a carrier’s total URCS fixed cost across all movements, dividing that number by the number of route miles operated by the carrier, and then multiplying the result by the number of route miles associated with the segment in question. If not confirmed, please explain.
4. In applying the ATC method, what adjustments, if any, should be made to the basic ATC methodology in dealing with a portion of a movement that:
 - a. Traverses track accessed under a trackage rights agreement?
 - b. Traverses track accessed under a haulage agreement?
 - c. Traverses track accessed under a switching agreement?

¹ These figures are derived from the STB’s confidential waybill sample. Out of an abundance of caution, these figures are redacted in the public version of this filing.

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- d. Traverses track jointly owned by the carrier in question and one or more other carriers?

The answers to these questions will help our experts to respond to the Board's questions in the November Decision. Our experts will also be prepared to share their workpapers at the technical conference and respond to the staff's questions.

Sincerely,

/s/ William A. Mullins

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

cc: Parties of Record