

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. 13

Decided: May 24, 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 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 decision served January 10, 2024, the Board granted KCS’s request for a staff-supervised technical conference to discuss aspects of Decision No. 11 that were unclear to KCS. BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry. (Decision No. 12), slip op. at 1-2 (STB served Jan. 10, 2024).¹ To facilitate a productive technical conference, KCS was ordered to

¹ The Board noted that the deadlines set forth in Decision No. 11 would be held in abeyance until further Board order. Decision No. 12, slip op. at 2.

submit a list of specific technical questions that it seeks to discuss at the conference, id., slip op. at 2, which KCS filed on January 24, 2024.

Board staff will hold a conference to discuss the technical questions raised by KCS. 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 substantive merits of any compensation issues. Because much of the data at issue has been designated “Highly Confidential” pursuant to the Protective Order issued in this case, the conference will be limited to outside counsel and outside consultants of the parties who have executed the required confidentiality undertakings. The conference will be held on Thursday, June 13, at 10:00 a.m. (ET), at the Board’s headquarters at 395 E Street, S.W., Washington, DC. KCS shall file a letter providing the names and positions of persons participating in the meeting by May 31, 2024. If UP and BNSF wish to participate in the conference, they shall file a letter providing the names and positions of the participants by May 31, 2024. For further information, contact Nathaniel Bawcombe at (202) 245-0376.

It is ordered:

1. A technical conference with Board staff is scheduled for 10:00 a.m. (ET) on Thursday, June 13, at the Board’s headquarters at 395 E Street, S.W., Washington, DC 20423.
2. KCS is directed to file a letter providing the names and positions of persons participating in the conference by May 31, 2024.
3. If UP and BNSF wish to participate in the conference, they shall file a letter providing the names and positions of the participants by May 31, 2024.
4. This decision is effective on the date of service.

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