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SERVICE DATE – JUNE 25, 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. 14

Decided: June 25, 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). 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.

The staff-supervised technical conference was held on June 13, 2024. Pursuant to Decision No. 12, the Board now issues a revised schedule for the submission of the supplemental analysis and data, as set forth below.

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 August 9, 2024.
2. BNSF and UP may file a reply to KCS's evidence by September 9, 2024.
3. KCS may submit a rebuttal by September 23, 2024.
4. This decision is effective on the date of service.

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