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SERVICE DATE – JULY 12, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 22218

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—OPERATING RIGHTS—
SOUTHERN PACIFIC TRANSPORTATION COMPANY

Decided: July 12, 2024

On May 15, 2023, the Board granted a petition filed by Union Pacific Railroad Company (UP), as successor to Southern Pacific Transportation Company, to reopen this proceeding to revise conditions governing trackage rights of BNSF Railway Company (BNSF), as successor to the Atchison, Topeka & Santa Fe Railway Company, over a 67.8-mile UP-owned rail line between Kern Junction and Mojave, Cal., known as the Tehachapis Line. See Atchison, T. & S.F. Ry.—Operating Rts.—S. Pac. Transp. Co., FD 22218, slip op. at 4 (STB served May 15, 2023).

In the same decision, the Board provided a period for discovery, assigned and authorized an administrative law judge to address any discovery disputes, directed the parties to participate in Board-sponsored mediation, and directed the parties to propose a procedural schedule if mediation was unsuccessful. Id. at 3-4. After conducting discovery in the summer of 2023, the parties entered into a Board-sponsored mediation period, which was unsuccessful. (See Board Letter, Dec. 19, 2023.) Pursuant to the Board's instructions, UP and BNSF then submitted a proposed procedural schedule, which the Board adopted on December 5, 2023. Atchison, T. & S.F. Ry.—Operating Rts.—S. Pac. Transp. Co., FD 22218 (STB served Dec. 5, 2023). In accordance with that schedule, the parties filed their opening statements and evidence on May 3, 2024, and replies are due on July 17, 2024. The procedural schedule also permitted the parties to seek additional discovery between the filing of opening statements and replies.

On June 26, 2024, BNSF filed a motion to compel UP to produce documents in response to certain BNSF discovery requests. BNSF requested expedited relief, that UP be required to respond in five days to the motion, and that the Board require UP to produce responsive documents no later than July 9, 2024. (BNSF Mot. to Compel 11.)

On July 5, 2024, BNSF filed a motion to modify the procedural schedule, seeking a 30-day extension of the filing deadlines remaining in this proceeding to allow the Board to rule on BNSF's motion to compel. (BNSF Mot. to Modify Procedural Schedule 2.) On July 9, 2024, UP filed a reply to BNSF's motion to modify the procedural schedule stating that it supports the motion. UP states that the Board may want to order the parties to meet and confer on an

appropriate adjustment to the procedural schedule once the discovery dispute has been resolved. (UP Reply 1, July 9, 2024.)

This proceeding will be held in abeyance pending further Board order to allow the Board to rule on BNSF's motion to compel. The Board will address the procedural schedule at that time. Accordingly, BNSF's motion to modify the procedural schedule will be denied as moot.

It is ordered:

1. This proceeding is held in abeyance pending further Board order.
2. BNSF's motion to modify the procedural schedule is denied as moot.
3. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.