

EXPEDITED CONSIDERATION REQUESTED

UP/SP-428

BEFORE THE
SURFACE TRANSPORTATION BOARD

245717

Finance Docket No. 32760 (Sub-No. 46)

ENTERED
Office of Proceedings
May 14, 2018
Part of
Public Record

BNSF RAILWAY COMPANY
— TERMINAL TRACKAGE RIGHTS —
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

**UNION PACIFIC RAILROAD COMPANY'S
MOTION FOR PROTECTIVE ORDER**

RHONDA S. FERGUSON
CRAIG V. RICHARDSON
ELISA B. DAVIES
JEREMY M. BERMAN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-7004

MICHAEL L. ROSENTHAL
BENJAMIN L. CAVATARO
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

May 14, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
— TERMINAL TRACKAGE RIGHTS —
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

**UNION PACIFIC RAILROAD COMPANY'S
MOTION FOR PROTECTIVE ORDER**

Pursuant to 49 C.F.R. § 1114.21(c)(1), Union Pacific respectfully asks the Board to order that Union Pacific need not respond to “BNSF’s First Set of Discovery Request to UP,” served May 11, 2018 (attached as Exhibit A). Good cause exists for granting the requested relief.

BNSF plainly timed its discovery requests to “annoy[],” “oppress[],” and create “undue burden or expense” for Union Pacific as we prepare our reply evidence. 49 C.F.R. § 1114.21(c). BNSF’s requests seek production of extensive documents and information relating to issues raised by its petition in this proceeding. BNSF says it wants the material by May 31. BNSF filed its petition on January 12, 2018. Union Pacific served discovery requests on January 23, 2018. If BNSF needed discovery, it could have served requests long ago. BNSF could have sought discovery even before filing its petition. BNSF had no valid reason to wait to serve discovery requests until 20 days before our reply evidence is due.

BNSF’s timing also suggests an attempt to manipulate the procedural schedule to obtain more time to prepare its rebuttal. Responding to discovery takes time. As Union Pacific showed in our petition for reconsideration of the procedural schedule, BNSF needed more than three months to complete its response to our discovery requests. After producing workpapers for one witness, BNSF did not produce any more documents until March 6, more than 40 days after we

served our requests. BNSF was still producing significant volumes of documents nearly two months later. BNSF did not even complete its production of workpapers for its primary witness until May 8. BNSF knows Union Pacific cannot comply with its requests before its rebuttal is due on June 20. And BNSF cannot make use of material we produce after June 20. If BNSF did not serve discovery merely to harass and burden Union Pacific as we prepare our reply evidence, then BNSF must have timed its requests to set up an argument for more time to file its rebuttal.

The Board's rules provide for issuance of a protective order "[t]hat the discovery not be had." 49 C.F.R. § 1114.21(c)(1). The Board should reject BNSF's sharp tactics and issue such an order here.

Respectfully submitted,

RHONDA S. FERGUSON
CRAIG V. RICHARDSON
ELISA B. DAVIES
JEREMY M. BERMAN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-7004

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
BENJAMIN L. CAVATARO
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

May 14, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2018, I caused a copy of the foregoing document to be served by email on counsel for BNSF, KCS, and CITGO.

/s/ Michael L. Rosenthal

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

BNSF’S FIRST SET OF DISCOVERY REQUESTS TO UP

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, BNSF Railway Company (“BNSF”) hereby requests that Union Pacific Railroad Company (“UP”) respond to and produce documents responsive to the following document requests and interrogatories at the offices of Mayer Brown LLP, 1999 K Street, NW, Washington, DC 20006, no later than May 31, 2018.

DEFINITIONS

1. “50/50 Line” shall mean the former SP Lafayette Subdivision between Dawes, TX and Avondale, LA.
2. “BNSF Railway Company” or “BNSF” shall mean BNSF Railway Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.
3. “Communication” shall mean any transmission or receipt of information by one or more persons or between two or more persons by means including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, text messages, instant messages, other computer linkups, written memoranda, and in-person conversations.
4. “Document” has the broadest meaning permissible under 49 C.F.R. 1114.30, including but not limited to electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form.
5. “Lacassine Yard” shall mean BNSF’s multi-track yard located on the 50/50 Line at Lacassine, Louisiana approximately 13 miles east of the Lake Charles Yard.
6. “Lake Charles Area” shall mean Lake Charles, West Lake Charles, and Westlake, Louisiana.

7. “Lake Charles Yard” shall mean UP’s rail yard located on the 50/50 Line approximately three-and-a-half miles east of the connection to the Rosebluff Lead.

8. “Lyondell” shall mean, collectively, Lyondell Chemical Company, Equistar Chemicals, LP, and LyondellBasell Acetyls, LLC, and their predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.

9. “Lyondell facility” shall mean the Lyondell facility located at West Lake Charles, Louisiana.

10. “Montell Lead” shall mean the track owned by the Port of Lake Charles, by which the Lyondell facility is accessed.

11. “Port of Lake Charles” shall mean the Port of Lake Charles, the Lake Charles Harbor and Terminal District, members of the Board of Commissioners of the Lake Charles Harbor and Terminal District, and their predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing entities and persons; and all persons acting or purporting to act on their behalf.

12. “Relating to” shall mean mentioning, discussing, reflecting, containing, concerning, embodying, stating, dealing with, or making reference to or relating to in any way.

13. “Rosebluff Lead” shall mean the former SP-operated single track which begins on the 50/50 Line at MP 222.3 and extends to the south for approximately 9 miles, and includes the Rosebluff Yard and all spurs and ancillary tracks connected thereto.

14. “Rosebluff Yard” shall mean the rail yard on the Rosebluff Lead consisting of five yard tracks and one running track, located approximately 0.50 miles south of the 50/50 Line.

15. “The Kansas City Southern Railway Company” or “KCSR”, shall mean The Kansas City Southern Railway Company and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.

16. “Union Pacific Railroad Company” or “UP” shall mean Union Pacific Railroad Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.

17. “UP Reply” shall mean the filing to be made by UP by May 31, 2018 pursuant to the procedural schedule set by the STB for this proceeding.

18. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

INSTRUCTIONS

1. If UP objects to any portion of any interrogatory or document request, it should identify the portion to which it objects, state the basis for the objection, and respond to the remainder. If UP has objections, UP’s counsel is requested to promptly confer with undersigned counsel for BNSF so that UP’s objection can be addressed and resolved in advance of May 31, 2018.

2. If UP asserts a claim of privilege as to documents sought in these requests, UP should list, for each such document, the document’s date, signatory or signatories, author(s), addressee(s), each other person who received a copy, the subject matter of the document, its location and custodian, and the basis for the claim of privilege. Such information should be supplied in sufficient detail to permit BNSF to assess the applicability of the privilege claimed.

3. If any of the requested documents was but is no longer in UP’s possession or subject to its control, state what disposition was made of it and when, and explain the reasons for such disposition.

4. These interrogatories and document requests are deemed continuing, and it is requested that supplemental responses and production be provided as additional information or documents become available.

5. The time frame for these interrogatories and document requests is January 1, 2015, until present unless a different time is stated.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all Documents (a) relating to or relied upon in the UP Reply and in any Verified Statements appended to the UP Reply or any of the exhibits attached thereto; (b) relating to or supporting any of the facts, analyses, contentions, or claims asserted in the UP Reply or in any Verified Statements; or (c) relating to, consulted or relied upon by the witnesses in preparing, writing, verifying, confirming, drafting, or editing the UP Reply and any Verified Statements.

2. Produce all Documents relating to UP’s studies, analyses, reports, or observations of train operations (a) on the Rosebluff Lead, in the Rosebluff Yard, or on the Montell Lead; (b) between UP’s Lake Charles Yard and customers served on the Rosebluff Lead; (c) between BNSF’s Lacassine Yard and customers served on the Rosebluff Lead; or (d) on any other Lake Charles Area trackage.

3. Produce all Documents, including dispatcher train sheets, logs or other records, reports or documents maintained by UP, relating to or identifying train movements, car events,

or switching events, for the full year 2017 and for 2018 through April 30, 2018, on the 50/50 Line, in the Rosebluff Yard, on the Rosebluff Lead, or on the Montell Lead. Such Documents should include but not be limited to (a) details on the operating locations and associated operating times for each train; (b) identification of crew on-duty and off-duty times; and (c) details on switching events, and spotting or pulling cars at customer locations, including but not limited to the following customers adjacent to the Montell Lead: West Lake Polymers, Lyondell, Kronos, Lake Charles Bulk Terminal, and Halliburton. With respect to the Rosebluff Yard, such Documents should include but not be limited to (x) the number of cars in the Rosebluff Yard (by track); and (y) any records of Rosebluff Yard activity or reports of cleared or occupied tracks.

4. Produce all studies, analyses, and reports relating to the historic, current, or potential future level or quality of rail transportation by BNSF, UP, KCSR or any other carrier to any shipper in the Lake Charles Area and any capacity or congestion issues on Lake Charles Area tracks and yards. These would include, but would not be limited to, studies, analyses, and reports concerning additional infrastructure in the Lake Charles Area, capacity estimates or models, utilization calculations, bottleneck calculations, throughput analyses, capital investment plans, and yard simulations.

5. Produce all Documents and Communications relating to BNSF's plans or proposals for direct service by BNSF in the Lake Charles Area, including but not limited to BNSF direct service to the Lyondell facility.

6. Produce all Communications between UP and KCS or between UP and any shippers relating to operational issues related to direct service by BNSF in the Lake Charles Area.

7. Produce all Communications with the Port of Lake Charles relating to operations in the Lake Charles Area, including any potential direct service by BNSF to shippers in the Lake Charles Area.

8. Produce all Documents and Communications relating to any potential terms of compensation which UP proposes for BNSF's use of the Rosebluff Lead pursuant to the terminal trackage rights granted by the Board.

9. Produce all Documents relating to, used, relied on, or referenced in UP's responses to any Interrogatories served by BNSF.

INTERROGATORIES

1. Identify all assumptions utilized in preparing the UP Reply and any Verified Statements appended to the UP Reply or any of the exhibits attached thereto.

2. Describe in detail the current operations in the Lake Charles Area, including the schedule for operations and routing of UP and KCSR trains, and state whether UP has an "operating plan" for the Lake Charles Area. Identify all Documents and Communications relating to such operations or plans.

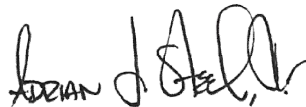
3. State (a) each specific way in which BNSF direct train service to the Lyondell facility would purportedly cause interference (i) with current or future operations in the Lake Charles Area, or (ii) with service by UP or KCSR to any shipper in the Lake Charles Area (including operations on the shippers' trackage); and (b) the infrastructure, service, or operational modifications that UP purports would be required to take to accommodate such BNSF direct train service. State the basis for each such modification and identify all Documents and Communications relating to all such purported interference and to all such modifications.

4. Does UP contend that BNSF direct service to the Lyondell facility is not practicable given the current rail infrastructure at the Lyondell facility and in the Lake Charles Area? If so, state the basis for UP's contention and identify all Documents and Communications relating to that contention.

5. Identify all capital improvements (if any) in the Lake Charles Area that UP contends would be required in order to accommodate direct service by BNSF to the Lyondell facility or to any other shipper in the Lake Charles Area, and identify all Documents and Communications relating to such improvements, including Documents and Communications evidencing UP's view as to how the costs of such improvements should be allocated.

6. State all proposed conditions of use which UP contends should be established by the Board for BNSF's direct service on the Rosebluff Lead. State the basis for UP's contention and identify all Documents and Communications relating to that contention.

Respectfully submitted,



Adrian L. Steel, Jr.
Adam C. Sloane
Peter W. Denton
Sasha L. Keck
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3237

Roy T. Englert, Jr.
Robbins, Russell, Englert, Orseck,
Untereiner & Sauber LLP
1801 K Street, NW, Suite 411L Washington,
DC 20006
(202) 775-4500

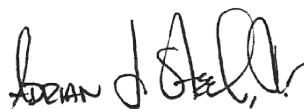
Roger P. Nober
Jill K. Mulligan
Richard E. Weicher
Tyler R. White
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2383

Counsel for BNSF Railway Company

Dated: May 11, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2018, copies of the foregoing BNSF's First Set of Discovery Requests to UP have been served by e-mail on counsel for UP and KCSR have been served by e-mail on Counsel for UP and KCSR.

A handwritten signature in black ink, appearing to read "Adrian L. Steel, Jr.", written over a horizontal line.

Adrian L. Steel, Jr.