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SERVICE DATE – DECEMBER 7, 2018

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. 6

Digest:¹ This decision directs BNSF Railway Company (BNSF), Union Pacific Railroad Company, and Kansas City Southern Railway Company to provide additional information that would assist the Board in establishing compensation for BNSF's use of the Rosebluff Lead.

Decided: December 4, 2018

By petition filed on January 12, 2018, BNSF Railway Company (BNSF) has requested that the Board establish conditions of use and compensation for BNSF to directly serve a LyondellBasell facility (Lyondell facility) at West Lake Charles, La., “over the Rosebluff Lead and related tracks via the terminal trackage rights granted by the Board” in BNSF Railway—Terminal Trackage Rights—Kansas City Southern Railway, FD 32760 (Sub-No. 46) (STB served July 5, 2016).²

In a decision served May 1, 2018, and corrected on May 4, 2018, the Board denied a motion filed by Kansas City Southern Railway Company (KCS) to dismiss this proceeding and issued a procedural schedule, which was amended in a decision served on May 15, 2018

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² This sub-docketed proceeding arises out of the 1996 merger between the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) (collectively UP) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company) (collectively SP). Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., 1 S.T.B. 233, 241 (1996).

(Decision No. 5).³ In accordance with the Board's amended procedural schedule, BNSF's January 12, 2018 petition, as supplemented on May 11, 2018, was considered to be BNSF's opening statement. On June 25, 2018, UP and KCS filed replies to BNSF's opening statement. On July 16, 2018, BNSF and KCS filed rebuttals.

While each party has put forth its conceptual approach to calculating the compensation that BNSF would pay to use the Rosebluff Lead to serve the Lyondell facility (see BNSF Pet. 15-17; UP Reply 60-61, June 25, 2018; KCS Reply 34-38, June 25, 2018), additional information is needed. In particular, the Board seeks information pertaining to fees that BNSF currently pays to UP for reciprocal switching on the Rosebluff Lead, as well as the trackage rights fee set forth under the UP/SP merger agreements and conditions (referred to as the "Prescribed Fee"). The Board also seeks input regarding various considerations and calculations under the SSW Compensation methodology,⁴ should the Board order that this methodology be used to calculate the trackage rights fee owed to one or more owners of the Rosebluff Lead. The specific information that the Board seeks is set forth in the Appendix to this decision. Parties shall submit the requested information by December 27, 2018. Replies to the requested information will be due by January 16, 2019.

It is ordered:

1. BNSF, UP, and KCS are directed to provide the information set forth in the Appendix to this decision by December 27, 2018.
2. Replies to the requested information are due by January 16, 2019.
3. This decision is effective on the date of service.

By the Board, Board Members Begeman and Miller.

³ In Decision No. 5, the Board also initiated Board-sponsored mediation. On October 17, 2018, the Board was informed that formal mediation was not successful in resolving the disputed issues.

⁴ See St. Louis S.W. Ry.—Trackage Rights Over Mo. Pac. R.R.—Kan. City to St. Louis (SSW I), 1 I.C.C.2d 776 (1984) & St. Louis S.W. Ry.—Trackage Rights Over Mo. Pac. R.R.—Kan. City to St. Louis, 4 I.C.C.2d 668 (1987) (collectively, SSW Compensation). Under the Board's SSW Compensation methodology, total compensation is the sum of three elements: (a) the variable cost incurred by the owning carrier due to the tenant carrier's operations over the owning carrier's track; (b) the tenant carrier's usage-proportionate share of the track's maintenance and operation expenses; and (c) an interest rental component designed to compensate the owning carrier for the tenant carrier's use of its capital dedicated to the track. E.g., SSW I, 1 I.C.C.2d at 779-80.

APPENDIX

1. Provide documents sufficient to demonstrate the current fee that BNSF pays to UP for reciprocal switching on the Rosebluff Lead, including governing agreements, terms, and clauses (e.g., escalation clauses).
2. Provide documents sufficient to demonstrate the current Prescribed Fee (i.e., the trackage rights fee that BNSF pays to UP under the UP/SP merger agreements/conditions), including governing agreements, terms, and clauses (e.g., escalation clauses).
3. If the Board determines that its SSW Compensation methodology should be used to calculate the trackage rights fee owed to one or more owners of the Rosebluff Lead/Yard,
 - a. What adjustments or modifications to the SSW Compensation methodology would be needed if BNSF is allocated one daily, exclusive window of time for direct operations on the Rosebluff Lead and BNSF's window occurs:
 - i. during UP's 12-hour window in Rosebluff Yard;
 - ii. during KCS's 12-hour window in Rosebluff Yard;
 - iii. during both UP's and KCS's 12-hour windows in Rosebluff Yard?
 - b. Would the SSW Compensation methodology need to be modified to properly account for operations in Rosebluff Yard if BNSF's proposed direct train service traverses Rosebluff Yard without stopping or switching?
 - c. What method should be used to calculate the interest rental component?⁵ Provide all information and data needed to support the suitability of your preferred method and to calculate the interest rental component under that method.
 - d. Should the below-the-wheel variable costs and maintenance-of-way costs be calculated based on actual costs or system-average costs under the Uniform Railroad Costing System (URCS)?
 - e. Should the SSW Compensation methodology take into account how costs and fees are currently allocated between the two owners of the Rosebluff Lead/Yard? If so, explain how certain SSW Compensation cost categories (e.g., maintenance-of-way) should be allocated between the owners of the property? What other adjustments or modifications to the SSW Compensation methodology would be needed to account for the fact that the Rosebluff Lead/Yard has two owners?
 - f. Should the trackage rights fee set by the Board be calculated on a carload, per car-mile, or per ton-mile basis?
 - g. Identify additional costs, if any, specific to the Rosebluff Lead/Yard that would not be accounted for under the Board's SSW Compensation methodology.

⁵ There are five methods of calculating the interest rental component: (a) capitalized earnings, (b) reproduction cost new less depreciation, (c) comparable lines method, (d) stand-alone cost, and (e) net liquidation value.