

SERVICE DATE – MAY 1, 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. 4

Digest:¹ BNSF Railway Company (BNSF) has filed a petition requesting that the Board establish conditions and compensation for BNSF to directly serve a facility in West Lake Charles, La., pursuant to Board-authorized terminal trackage rights. Kansas City Southern Railway Company (KCS) has filed a motion to dismiss BNSF's petition. In this decision, the Board denies KCS's motion to dismiss and sets forth a procedural schedule to govern this proceeding.

Decided: April 30, 2018

By petition filed on January 12, 2018 (petition), BNSF Railway Company (BNSF) has requested that the Board establish conditions of use and compensation for BNSF to directly serve a LyondellBasell (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 (Decision No. 3), FD 32760 (Sub-No. 46) (STB served July 5, 2016). Kansas City Southern Railway Company (KCS) filed a motion to dismiss BNSF's petition. Union Pacific Railroad Company submitted filings in support of KCS's motion to dismiss, in addition to a motion to establish a procedural schedule. As discussed below, the Board will deny KCS's motion to dismiss and issue a procedural schedule.

BACKGROUND

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)

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. Policy Statement on Plain Language Digests in Decision, EP 696 (STB served Sept. 2, 2010).

(collectively SP). Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (UP/SP Decision No. 44), 1 S.T.B. 233, 241 (1996). In approving the merger, the Board imposed trackage rights conditions relating to the handling of traffic of Lake Charles area shippers (the Lake Charles Merger Conditions).² See UP/SP Decision No. 44, 1 S.T.B. at 243, 427-29; Decision No. 3, slip op. at 2-3. Among other things, the Lake Charles Merger Conditions allowed BNSF to handle traffic of shippers open to all of UP, SP, and KCS at Lake Charles and West Lake, La., and to handle traffic of shippers open to SP and KCS at West Lake Charles, La. See UP/SP Decision No. 44, 1 S.T.B. at 427-29; Decision No. 3, slip op. at 2-3.

In a decision served December 4, 1996, the Board denied a petition to reopen or reconsider UP/SP Decision No. 44 filed by KCS. In its petition, KCS had sought to eliminate certain aspects of the conditions that gave BNSF access to shippers in the Lake Charles area. See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (UP/SP Decision No. 63), FD 32760 (STB served Dec. 14, 1996). Specifically, KCS had argued that various joint facility agreements between it and UP prohibited UP from providing BNSF direct access to shippers at West Lake and West Lake Charles without KCS's consent, and that the Board could only require KCS to provide such access if BNSF filed a terminal trackage rights application under 49 U.S.C. § 11103 (now 49 U.S.C. § 11102). See id. at 5-6. The Board, however, refused to reconsider the conditions imposed in UP/SP Decision No. 44, finding that “giving BNSF additional rights was the most effective way to assure continued competition for Lake Charles area shippers.” Id. at 8. The Board further stated that, if the parties (KCS, BNSF, and UP) were unable to come to an agreement regarding the terms of the joint facility agreements, any differences in interpretation of the joint facility agreements could be submitted to arbitration and that, in the event of an impasse, BNSF could return to the Board to seek approval of a terminal trackage rights application. Id. at 9-10.

On February 27, 2013, BNSF filed a terminal trackage rights application with the Board, initiating the present sub-docketed proceedings. In Decision No. 3, the Board granted BNSF terminal trackage rights over the Rosebluff Lead, a nine-mile single-track line that is jointly owned by KCS and UP, to facilitate BNSF's direct access to Lake Charles area shippers. The Board found the requested terminal trackage rights to be in the public interest under 49 U.S.C. § 11102(a), because they were necessary to effectuate the Lake Charles Merger Conditions imposed in UP/SP Decision No. 44 and reaffirmed in UP/SP Decision No. 63, specifically BNSF's option of directly accessing Lake Charles area shippers, including those on the Rosebluff Lead, via trackage rights. Decision No. 3, slip op. at 9-13. The Board also found that preservation of BNSF's option of direct access was necessary to preserve the Lake Charles area shippers' access to multiple competitive carriers and routing options. Id. at 10. The Board further determined, under 49 U.S.C. § 11102(a), that BNSF's use of the terminal facilities would be practicable and would not substantially impair the ability of the rail carriers owning the facility (UP and KCS) to handle their own business. Id. at 13-18. While the Board's analysis focused on the impact of BNSF's direct service to CITGO Petroleum Corporation (CITGO), it

² The Lake Charles Merger Conditions were based on settlement agreements that had been negotiated in connection with the UP/SP merger. For additional background, see Decision No. 3, slip op. at 2-3.

addressed the possibility of BNSF providing direct service to other shippers along the Rosebluff Lead that were covered by the Lake Charles Merger Conditions. See id. at 18, 19. The Board then directed the parties to “collectively develop conditions governing their use of the Rosebluff Lead, including BNSF’s access (if it so elects) to directly serve shippers other than CITGO,” the shipper upon which BNSF’s application was primarily focused. See id. at 19.³

Pursuant to the terminal trackage rights granted in Decision No. 3, BNSF now requests that the Board establish conditions of use and compensation for BNSF to directly serve a Lyondell facility at West Lake Charles, La., “over the Rosebluff Lead and related tracks.” (BNSF Pet. 1.) BNSF states that the Lyondell facility is accessed via the Montell Lead, which is owned by the Port of Lake Charles and connects with the Rosebluff Lead approximately 2.37 miles southwest of the Rosebluff Yard. (See id. at 7, V.S. Reilly 4.) BNSF states that, despite its extensive negotiations with UP and KCS, the parties are unable to reach an agreement regarding conditions and compensation for BNSF’s use of the Rosebluff Lead and its direct access to the Lyondell facility, and that Board intervention is appropriate at this time. In support of its petition, BNSF includes a proposed operating plan for how it would provide direct service to the Lyondell facility via the Rosebluff Lead and the Montell Lead.

On February 1, 2018, KCS filed a motion to dismiss BNSF’s petition. KCS asserts that BNSF has not presented a prima facie case that it has both the legal and contractual right to serve Lyondell. In particular, KCS argues that BNSF has not established that Decision No. 3 granted BNSF access to shippers other than CITGO or that Lyondell is a shipper covered by the Lake Charles Merger Conditions and the access granted in Decision No. 3. KCS also argues that the terminal trackage rights granted in Decision No. 3 do not allow BNSF to directly access shipper facilities, like Lyondell’s, that are not immediately adjacent to the Rosebluff Lead. In addition, KCS contends that BNSF has not secured the necessary legal or contractual rights to operate over the track that connects the Lyondell facility to the Rosebluff Lead (which, according to KCS, includes both the Montell Lead and a separate 0.40-mile segment of track connecting the Montell Lead with the Rosebluff Lead). Lastly, KCS asserts that BNSF has not established that Lyondell, in fact, desires BNSF direct service or that such service promotes the public interest.

Also by motion filed on February 1, 2018, UP requests that the Board establish a procedural schedule that gives parties an opportunity to complete on-going discovery and file replies to BNSF’s petition. Specifically, UP proposes a 60-day period to complete discovery, followed by a 90-day period to file replies. However, on February 7, 2018, UP filed a supplement to its motion for a procedural schedule, requesting that the Board defer any ruling on

³ KCS has sought judicial review of Decision No. 3 in the United States Court of Appeals for the District of Columbia Circuit. Kan. City S. Ry. v. STB, No. 16-1308 (D.C. Cir. Sept. 1, 2016). On January 3, 2017, the court granted the Board’s motion to hold the case in abeyance pending further order of the court.

its motion until it addresses KCS's motion to dismiss.⁴ In a February 21, 2018 reply, BNSF proposes its own procedural schedule, under which BNSF's petition would be considered an opening statement and a rebuttal would be allowed following the replies.

In a separate reply dated February 21, 2018, BNSF opposes KCS's motion to dismiss. BNSF argues that the scope of terminal trackage rights granted in Decision No. 3 includes access to shippers other than CITGO. BNSF also asserts that the Lake Charles Merger Conditions apply to the Lyondell facility, as the facility is located in West Lake Charles and has been open to BNSF service (via UP reciprocal switching) pursuant to the Lake Charles Merger Conditions since 1997, when BNSF first began service to West Lake Charles customers, including Occidental Chemical, which BNSF asserts is Lyondell's predecessor-in-interest.⁵ BNSF further claims that, contrary to KCS's argument, the Montell Lead connects directly to the Rosebluff Lead. Concurrent with its reply, BNSF submitted a corrected version of the map contained in Exhibit 1 of its petition, which it states shows that the Montell Lead is directly connected to the Rosebluff Lead. BNSF also states that the owner of the Montell Lead, the Port of Lake Charles, has indicated to BNSF that it does not object to BNSF operations on the Montell Lead. Lastly, BNSF notes that Lyondell has requested direct BNSF service through a September 7, 2016 letter, which BNSF includes in its reply.

On March 5, 2018, KCS filed a "reply to BNSF's amended petition." KCS continues to dispute BNSF's claim that the Montell Lead connects directly with the Rosebluff Lead. KCS asserts that BNSF's own evidence acknowledges a separate 0.40-mile piece of track between the Montell Lead and the Rosebluff Lead. (KCS Reply 4-5, Mar. 5, 2018 (citing BNSF Pet., V.S. Reilly 8, Ex. A at 3).) Referring to a map in its 1983 Spot Location Inventory Control book, KCS argues that the separate 0.40-mile connecting track joins the Rosebluff Lead to the Montell Lead, and that ownership of this track is unclear. (KCS Reply 5-6, Mar. 5, 2018.) Given that Decision No. 3 granted terminal trackage rights on or over the Rosebluff Lead and not over any other tracks, KCS argues that the Board must dismiss BNSF's petition until BNSF has obtained legal authority to operate over the Montell Lead and the 0.40-mile connecting track. On the issue of whether the Lake Charles Merger Conditions apply to the Lyondell facility, KCS concedes that the facility is in West Lake Charles but disputes BNSF's claim that it was an Occidental Chemical facility at the time of the UP/SP merger. KCS contends that the facility was instead operated by Montell USA, Inc. (Montell) at the time of the merger and argues that BNSF has not shown that the Lyondell facility is entitled to BNSF access under the Lake Charles Merger Conditions.

⁴ On February 21, 2018, UP also filed a reply to KCS's motion to dismiss, noting that the Board should address the issues raised in KCS's motion prior to requiring parties to file substantive comments on BNSF's petition.

⁵ In a subsequent filing (discussed below), BNSF appears to have changed its position, stating that it "has no reason to doubt" that the Lyondell facility was owned by Montell USA, Inc., at the time of the UP/SP merger. (BNSF Reply 5-6, Mar. 22, 2018.)

On March 9, 2018, UP filed a “reply to BNSF’s amended petition,” also arguing that, contrary to BNSF’s claim, the Montell Lead does not connect directly to the Rosebluff Lead. UP asserts that its current Zone Track Spot book depicts a separate segment of track—distinct from the Rosebluff Lead—that connects the Montell Lead to the Rosebluff Lead. Like KCS, UP also contends that the Lyondell facility is not the successor-in-interest to the Occidental Chemical facility and that the Lyondell facility at issue was served under industry track agreements with Montell at the time of the merger. Lastly, in response to BNSF’s assertion that the Port of Lake Charles has agreed to allow BNSF to access the Montell Lead, UP states that the industry track agreement governing the Montell Lead appears to preclude a unilateral grant of operating rights by the Port of Lake Charles, or even a joint grant of operating rights by the Port of Lake Charles and UP.

On March 22, 2018, BNSF replied to KCS’s and UP’s replies, asserting that KCS and UP have provided no evidence that adds to the arguments presented in KCS’s motion to dismiss and that the evidence further affirms the sufficiency of BNSF’s petition.

On April 9, 2018, Lyondell filed a letter stating its support for BNSF’s petition and requesting that the Board expeditiously issue an order allowing BNSF to use the terminal trackage rights granted in Decision No. 3 to directly serve Lyondell’s facility at West Lake Charles. On April 16, 2018, KCS filed a reply to Lyondell’s comments.⁶

DISCUSSION AND CONCLUSIONS

KCS’s Motion to Dismiss

Motions to dismiss are generally disfavored. When reviewing a motion to dismiss, the Board views all alleged facts in the light most favorable to the complainant. Consumers Energy Co. v. CSX Transp., Inc., NOR 42142, slip op. at 1 (STB served June 15, 2015); Montana v. BNSF Ry., NOR 42124, slip op. at 3 (STB served Feb. 16, 2011). Based on the record, KCS’s motion to dismiss BNSF’s petition will be denied.

Decision No. 3’s Terminal Trackage Rights Over the Rosebluff Lead Apply to All Customers Accessible Via the Rosebluff Lead and Covered by the Lake Charles Merger Conditions. KCS argues that the record supporting Decision No. 3 was comprised almost entirely of evidence pertaining to BNSF service of the CITGO facility, and that it is therefore incorrect to assume that Decision No. 3 covered access to other shippers, including the Lyondell facility. KCS states that the Board has not made, and cannot make, the requisite findings that service to Lyondell is in the public interest or practicable under 49 U.S.C. § 11102(a).

To the contrary, the terminal trackage rights over the Rosebluff Lead granted in Decision No. 3 encompass BNSF’s direct access to all Lake Charles area shipper facilities accessible via

⁶ In the interest of compiling a complete record, the Board will accept all of the filings to date. See City of Alexandria, Va.—Pet. for Declaratory Order, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing reply to reply “(i)n the interest of compiling a full record”).

the Rosebluff Lead and covered by the Lake Charles Merger Conditions. The Board did not limit its public interest analysis to BNSF's service to the CITGO facility. Rather, the Board found that granting BNSF terminal trackage rights over the entire Rosebluff Lead would be in the public interest under § 11102(a) because "the preservation of BNSF's option of direct access is necessary to preserve *these* [Lake Charles area] *shippers'* access to multiple competitive carriers and routing options and, thus, necessary to effectuate the merger conditions imposed in UP/SP Decision No. 44." Decision No. 3, slip op. at 10 (emphasis added). Indeed, Decision No. 3's public interest analysis repeatedly stressed the importance of BNSF direct access to "Lake Charles area shippers" and "shippers on the Rosebluff Lead" generally. Id. at 10 & n.7, 12, 13. Because Decision No. 3 granted trackage rights on the Rosebluff Lead for BNSF's direct access to all shipper facilities in the Lake Charles area covered by the Lake Charles Merger Conditions, the Board need not individually assess the public interest implications as to each shipper facility, as KCS argues in its motion.

Likewise, when the Board found BNSF's use of the terminal facilities to be practicable without substantially impairing the operations of UP or KCS, it considered BNSF's direct service over the entire Rosebluff Lead (including through the Rosebluff Yard), not solely its direct service to the CITGO facility. Decision No. 3, slip op. at 15. Although the Board made certain findings related to BNSF's service to CITGO, the Board expressly stated that its conclusions were based on the complete record before it, "including the possibility that BNSF may elect to directly serve additional shippers on the [Rosebluff] Lead." Id. at 18. The Board also stressed the need for all three carriers "to collectively develop conditions governing their use of the Rosebluff Lead, including BNSF's access (if it so elects) *to directly serve shippers other than CITGO*." Id. at 19 (emphasis added). Thus, contrary to KCS's argument, the Board's analysis in Decision No. 3 clearly contemplated the possibility of BNSF serving other shippers besides CITGO, and its grant of trackage rights applied to all shipper facilities accessible via the Rosebluff Lead and subject to the Lake Charles Merger Conditions.

The Lake Charles Merger Conditions Apply to the Lyondell Facility. The Board finds no merit in KCS's assertion that the Lyondell facility is not covered by the Lake Charles Merger Conditions imposed in UP/SP Decision No. 44 and reaffirmed in UP/SP Decision No. 63. As described above, any facility located at West Lake Charles and "open to SP and KCS" before the UP/SP merger was subject to the Lake Charles Merger Conditions. UP/SP Decision No. 44, 1 S.T.B. at 428; Decision No. 3, slip op. at 2-3, 9-10. It is uncontested that the Lyondell facility is located in West Lake Charles.

With respect to whether the facility was "open to SP and KCS" before the UP/SP merger, the arguments center around the identity of Lyondell's predecessor. KCS and UP contend that the Lyondell facility was previously owned by Montell at the time of the UP/SP merger. (KCS Reply, V.S. Nolte 6, Mar. 5, 2018; UP Reply 2-3, Mar. 9, 2018.) Although BNSF originally contended that Lyondell's predecessor was Occidental Chemical, BNSF agrees in its March 22 filing that the facility was previously owned by Montell. (BNSF Reply 5-6, Mar. 22, 2018.) Finally, Lyondell's own April 9 filing states that its facility at West Lake Charles was a part of Montell Polyolefins beginning in 1995 (and at the time of the UP/SP merger). Thus, it appears that the parties agree that the Lyondell facility is a former Montell facility. Further, the Board's 1996 decision approving the merger confirms that the Montell facility was open to SP and KCS

at the time of the UP/SP merger and subject to the Lake Charles Merger Conditions. See UP/SP Decision No. 44, 1 S.T.B. at 318-19, 427-28. Therefore, the Board finds no persuasive evidence to support KCS's claim that the Lyondell facility is not covered by the Lake Charles Merger Conditions.

The Board Need Not Dismiss on the Basis of Arguments Related to Connecting Trackage in Order to Set Conditions and Compensation for Use of the Rosebluff Lead Itself. KCS makes two arguments related to connecting trackage (i.e., track that is not part of the Rosebluff Lead). First, KCS argues that the terminal trackage rights granted by the Board do not allow BNSF to serve shippers like Lyondell that are not located directly on the Rosebluff Lead, but are instead adjacent to the Rosebluff Lead and accessed via connecting trackage. (KCS Mot. to Dismiss 12-14.) Second, KCS argues that BNSF has not shown that it has the right (either by grant of trackage rights authority or by private contract) to operate over the track between the Rosebluff Lead and the Lyondell facility, which it alleges includes the Montell Lead and a separate 0.40-mile segment. (KCS Mot. to Dismiss 17-20.) Similarly, UP argues that, despite BNSF's claim that the Port of Lake Charles will grant BNSF access to the Montell Lead, a provision of the track agreement governing the Montell Lead appears to preclude a unilateral grant of operating rights by the Port (or even a joint grant of operating rights by the Port and UP). (UP Reply 3, Mar. 9, 2018.)

BNSF contends that the Rosebluff Lead connects directly to the Montell Lead. (BNSF Suppl., Feb. 21, 2018; BNSF Reply 4, Mar. 22, 2018.) BNSF further argues that, for purposes of its petition, it is irrelevant whether or not any connecting track is distinct from the Rosebluff Lead or Montell Lead because BNSF will acquire access to any such track. (BNSF Reply 4, Mar. 22, 2018.) BNSF also notes that UP failed to describe or include the provision of the track agreement governing the Montell Lead, and that regardless, BNSF does not need to have acquired any additional rights before the establishment of use and compensation for the Rosebluff Lead. (*Id.* at 4-5.)

The Board finds no sufficient basis for dismissing this proceeding based on KCS's and UP's arguments. In granting terminal trackage rights in Decision No. 3, the Board sought to facilitate direct BNSF service to all customers accessible via the Rosebluff Lead and covered by the Lake Charles Merger Conditions. See Decision No. 3, slip op. at 9-13 & nn.7, 9. Thus, even though the Board in that decision granted BNSF terminal trackage rights over the Rosebluff Lead alone (as that was the only line to which BNSF was seeking access), the Board's decision should not be read to exclude access to customer facilities in the same terminal area that connect to the Rosebluff Lead via short additional track segments. Rather, it is appropriate to conclude that the decision's grant of rights contemplated BNSF securing the rights necessary to access such facilities, if it so chooses, whether through private contractual arrangements or through Board-granted authority.

BNSF has indicated that it is in the process of securing from the Port of Lake Charles the rights to operate over the Montell Lead, which BNSF contends connects directly to the Rosebluff Lead. (See BNSF Pet. 5; BNSF Reply 4, Mar. 22, 2018.) The fact that BNSF is still in the process of acquiring the rights to traverse the tracks connecting the Lyondell facility to the Rosebluff Lead does not prevent the Board from establishing conditions and compensation for

use of the Rosebluff Lead in this proceeding.⁷ There is no language in Decision No. 3 indicating any prerequisite to the Board's establishment of conditions and compensation for the Rosebluff Lead (aside from an inability of the parties to collectively reach agreement on their own). See Decision No. 3, slip op. at 19, 20. To conclude that the Board cannot rule on BNSF's present petition until BNSF has obtained all necessary rights would require an overly narrow interpretation of Decision No. 3.

Lyondell Has Requested Direct Service from BNSF. Lastly, KCS argues that there is no evidence indicating that Lyondell has requested, or has a need for, direct service from BNSF. However, in its reply to KCS's motion to dismiss, BNSF provided a letter from Lyondell requesting direct service to its facility. (BNSF Reply, Ex. 2, Feb. 21, 2018.) In addition, Lyondell has itself filed a letter confirming that it has requested BNSF direct service because its current BNSF service via reciprocal switching is operationally limited and inefficient.

For all the foregoing reasons, the Board finds no basis for dismissing BNSF's petition to establish conditions and compensation for use of the Rosebluff Lead. KCS's motion will be denied.

Supplemental Information from BNSF

As noted, in support of its petition, BNSF includes a proposed operating plan for how it would provide direct service to the Lyondell facility via the Rosebluff Lead and connecting trackage. BNSF will be required to supplement its petition with additional information that would assist the Board in establishing conditions and compensation for its use of the Rosebluff Lead. BNSF should provide additional information (including workpapers or analysis) regarding BNSF's expectations of its use of the tracks at or near the Lyondell facility, including, e.g., which tracks will be used for switching and when; anticipated amount of time to perform switching; plans for coordinating with other carriers (if applicable); and any relevant capacity/availability issues. BNSF will be directed to submit this information by May 11, 2018.

Procedural Schedule

After considering UP's and BNSF's respective requests concerning a procedural schedule, the Board will adopt the following procedural schedule to govern this proceeding:

May 11, 2018	BNSF Supplemental Information Due
May 31, 2018	Replies and Reply Evidence Due
June 20, 2018	BNSF Rebuttal Argument and Evidence Due

⁷ There appears to be a factual dispute surrounding the ownership and status of a 0.40-mile piece of connecting track that KCS alleges joins the Montell Lead with the Rosebluff Lead. The Board need not weigh in on this factual dispute for the purposes of deciding KCS's motion to dismiss. As noted above, for the purposes of BNSF's petition, the Board assumes that BNSF will secure the rights it needs to reach customers located along the Rosebluff Lead. If necessary, it may seek Board authority to operate over any connecting track, as appropriate.

Under this procedural schedule, BNSF's petition, as supplemented, will be considered its opening statement. The procedural schedule provides 30 days for parties to reply to BNSF's opening statement and 20 days for BNSF to file its rebuttal argument. Given the expeditious schedule, the Board expects the parties to continue to work to resolve discovery issues efficiently and cooperatively.

Board-Sponsored Mediation

The Board reminds the parties it is available to assist in Board-sponsored mediation to establish conditions and compensation governing the trackage rights granted in Decision No. 3. The Board "favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings." 49 C.F.R. § 1109.1. Mediation can be particularly appropriate when disputes involve operational issues. See Cent. Ill. R.R.—Operation Exemption—Rail Line of Peoria, Ill., FD 34518, slip op. at 6-7 (STB served Feb. 23, 2005). Accordingly, the Board requests BNSF, UP, and KCS to inform the Board if they are interested in participating in Board-sponsored mediation.

It is ordered:

1. KCS's motion to dismiss BNSF's petition is denied.
2. BNSF shall submit supplement its petition, as described above, by May 11, 2018.
3. The parties shall comply with the procedural schedule set forth in this decision.
4. This decision is effective on the date of service.

By the Board, Board Members Begeman and Miller.