

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD
Proceedings



GRANTED

DECISION ID NO.: 45323
DECIDED DATE: 7/11/16
SERVICE DATE: 7/11/16
APPROVED: Peter D. Campbell
Director

☒ Motion for Access granted

STB FINANCE DOCKET NO. 36028

**KANAWHA RIVER RAILROAD, L.L.C.
-- LEASE EXEMPTION CONTAINING INTERCHANGE COMMITMENT --
NORFOLK SOUTHERN RAILWAY COMPANY**

MOTION FOR ACCESS TO CONFIDENTIAL DOCUMENTS

The Dow Chemical Company ("Dow") hereby requests, pursuant to 49 C.F.R. § 1150.33(h)(2) that the Surface Transportation Board ("Board" or "STB") grant it access to redacted information included in the Notice of Exemption ("Notice") filed by Kanawha River Railroad, L.L.C. ("KNWA") in this docket on July 1, 2016. KNWA has agreed to grant such access to Dow once a Protective Order is in place in this proceeding. Therefore, Dow also seeks issuance of a Protective Order in the format included in a filing made by M&G Polymers USA, LLC earlier today in this proceeding.

Depending on the date the Protective Order is issued, Dow also seeks a housekeeping stay so there are at least twenty (20) days between the date of the Protective Order and the effective date of the Notice, which is July 31st. If the Protective Order is issued on or before July 11th, then no housekeeping stay would be needed. Given that KNWA consents to the relief requested herein, Dow respectfully requests expedited consideration of this Motion. In support hereof, Dow states as follows:

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I. Background.

In the Notice, KNWA sought regulatory authorization for a lease of approximately 308.85 miles of track owned by Norfolk Southern Railway Company (“NS”) in Ohio and West Virginia. The Notice reveals that an interchange commitment would apply to the relevant lease between KNWA and NS. See Notice at 5. The terms of the interchange commitment are described in a lease agreement (“Lease Agreement”) that was filed under seal. See Notice at 5. KNWA also submitted other information under seal. See Notice at 7. Barring further action of the Board, regulatory authorization for the transaction will exist as of July 31, 2016. See 49 C.F.R. § 1150.32(b).

II. Identity and Interest of Dow.

Dow’s wholly-owned subsidiary, Union Carbide Corporation (“Union Carbide”), conducts chemical manufacturing operations at Institute, West Virginia (the “Institute Facility”). The Institute Facility is located on the NS rail line at issue in this proceeding, and KNWA has cited Union Carbide as one of the shippers affected by the proposed transaction. See Notice at 6. At the Institute Facility, Union Carbide manufactures specialty chemical products that are used in wide variety of everyday consumer items. To conduct these manufacturing operations at the Institute Facility, Union Carbide relies upon inbound and outbound rail transportation. Currently, NS provides rail operations to and from the Institute Facility.

Given the importance of rail transportation to manufacturing at the Institute Facility, Dow is understandably interested in the interchange commitment contained in the proposed Lease Agreement between KNWA and NS.

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III. KNWA Has Agreed to Release Redacted Information to Dow.

Pursuant to the Board's regulations, shippers or other affected parties may seek access to confidential material filed with a notice of exemption when an interchange commitment exists or is proposed. See 49 C.F.R. § 1150.33(h)(2). After learning of the interchange commitment proposed in this proceeding, counsel for Dow contacted counsel for KNWA to discuss access to the confidential materials. KNWA agreed to voluntarily grant such access to Dow as long as a Protective Order is in place. Therefore, Dow hereby requests that the Board issue a Protective Order in the format requested by M&G Polymers USA, LLC earlier today in this proceeding. Dow seeks entry of the Protective Order pursuant to the Board's authority in 49 C.F.R. § 1150.33(h)(2)(ii). The order proposed earlier today generally follows the format of the protective orders that have been utilized by the Board in recent document access proceedings, such as Finance Docket No. 35972 (decision served Nov. 20, 2015) and Finance Docket No. 35729 (decision served July 30, 2013).

IV. A Housekeeping Stay is Warranted if the Protective Order is Issued After July 11th.

Under the standard 30-day timeframe for the class exemption process, the Notice will be effective (and the lease of NS track by KNWA will be authorized) on July 31st if the Board takes no action. See 49 C.F.R. § 1150.32(b). In order to provide Dow with sufficient time to review the Lease Agreement and the interchange commitment contained therein before the effective date of the Notice, Dow hereby requests that the Board impose a housekeeping stay on the effective date if the Protective Order is issued after July 11th. The requested housekeeping stay would be for twenty (20) days after the date the Protective Order is issued. This brief extension would enable pre-consummation review of the proposed interchange commitment. This request is made pursuant to 49 C.F.R. § 1117.1 and precedent such as the Board's decision in West Belt

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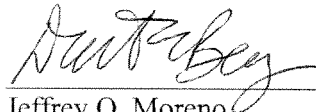
Railway, LLC – Lease and Operation Exemption Including Interchange Commitment – Terminal Railroad Association of St. Louis, STB Docket No. 35972, slip op. at 2 (served Nov. 20, 2015).

If the Protective Order is issued on or before July 11th, no housekeeping stay would be needed. Therefore, Dow respectfully requests that the Board expeditiously issue the Protective Order. Counsel for Dow has discussed the possible need for a housekeeping stay with KNWA counsel, and KNWA consents to the relief requested herein, though KNWA expressed its desire to keep any delay to a minimum.

V. Conclusion.

As described herein, Dow should be given access to the Lease Agreement and other redacted material in order to evaluate the possible impact of the interchange commitment on operations at the Institute Facility. To facilitate such access, a Protective Order should be issued. If the Protective Order is issued after July 11th, Dow also requests a housekeeping stay so that there are at least twenty (20) days between issuance of the Protective Order and the effective date of the exemption sought in the Notice. KNWA consents to the relief sought herein, so Dow respectfully requests that the Board promptly issue the requested decision.

Respectfully submitted,



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July 7, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July 2016, I served a copy of the foregoing upon counsel for the entities listed below via electronic mail and U.S. first-class mail, postage prepaid.

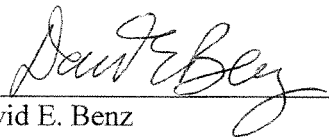
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