

44759
DO

SERVICE DATE – FEBRUARY 12, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35842

NEW ENGLAND CENTRAL RAILROAD, INC.—TRACKAGE RIGHTS ORDER—
PAN AM SOUTHERN LLC

Decided: February 12, 2016

By decision served December 23, 2014, the Board instituted a proceeding to establish new terms and conditions for the trackage rights of Pan Am Southern LLC (PAS) over a New England Central Railroad, Inc. (NECR) line of railroad, extending approximately 72.8 miles, from White River Junction, Vt., to East Northfield, Mass.

The Board has found, and both NECR and PAS agree, that the framework for setting compensation in trackage rights cases was set forth in St. Louis Southwestern Railway—Trackage Rights Compensation, 1 I.C.C.2d 776 (1984) and St. Louis Southwestern Railway Compensation—Trackage Rights, 4 I.C.C.2d 668 (1987) (collectively, SSW Compensation). See Ark. & Mo. R.R. v. Mo. Pac. R.R., 6 I.C.C.2d 619 (1990) (applying SSW Compensation in trackage rights compensation cases). Under SSW Compensation, 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 or rental component designed to compensate the owning carrier for the tenant carrier's use of its capital dedicated to the track. The third element, the interest rental component, is determined by multiplying: (i) the value of the assets by (ii) a rate of return equal to the current pre-tax nominal cost of capital. Ark. & Mo. R.R., 6 I.C.C.2d at 622 n.8. The resulting product is then apportioned to the tenant carrier according to its percentage of cars traversing the line. Id.

When calculating the interest rental component in trackage rights compensation cases, the Board has generally discussed four possible methods for determining the value of the trackage rights line: (1) capitalized earnings (CE); (2) comparable line segments; (3) reproduction cost new less depreciation (RCNLD); and (4) stand alone cost (SAC). See Toledo, Peoria & W. Ry.—Trackage Rights Compensation—Peoria & Pekin Union Ry., FD 26476 (Sub-No. 1) (ICC served Sept. 20, 1994); Atchison, Topeka & Santa Fe Ry.—Operating Agreement—S. Pac. Transp., 8 I.C.C.2d 297, 304-305 (1992). As discussed in the Board decision served concurrently with this one, NECR requested that the Board make a preliminary determination as to the appropriate valuation methodology to be used in calculating the interest rental component. The Board has denied NECR's request and has held that discovery pertaining to all four SSW Compensation methodologies discussed above will be permitted.

On August 3, 2015, PAS filed a motion to compel responses to its first round of discovery requests directed to NECR. PAS states that NECR has refused to produce any information regarding the CE, comparable line segments, and SAC approaches, effectively denying PAS the opportunity to examine all relevant evidence and make a determination as to which of the four Board-approved methodologies it will put forth in its reply. PAS further asserts that the documents that NECR has produced are inadequate.

On August 24, 2015, NECR filed a reply to PAS's motion to compel, asserting that it has provided substantial replies to PAS's discovery requests, except to requests pertaining to methodologies that NECR has argued are not appropriate in this proceeding.

The Board has signed a Memorandum of Understanding (MOU) with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, STB-assigned functions such as adjudicating discovery disputes between parties in cases pending before the STB.

The Director of the Office of Proceedings, pursuant to authority delegated by the Chairman under 49 C.F.R. § 1011.6, is assigning and authorizing Administrative Law Judge Steven A. Glazer of FERC to entertain and rule upon discovery matters and to resolve all disputes concerning discovery in this proceeding. The purpose of this referral is not for the ALJ to resolve any underlying disputes regarding the appropriate methodology to be used for determining the value of the trackage rights line. The parties in this proceeding are hereby directed to send copies of all their filings and documents in this proceeding to Judge Glazer at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.

It is ordered:

1. This proceeding is assigned to Administrative Law Judge Glazer for handling of all discovery matters and initial resolution of all discovery disputes.
2. Each party in this proceeding must send a copy of its filings to Judge Glazer at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.
3. Judge Glazer will be added to the service list in this proceeding, and a copy of this decision will be served upon him.
4. A copy of this decision will be served on the United States Office of Personnel Management (OPM), at Human Resources Solutions, ALJ Program Office, 1900 E Street NW, Room 2458, Washington, DC 20414-9400. Judge Glazer shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.
5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.