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SERVICE DATE – NOVEMBER 30, 2015

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

Decided: November 30, 2015

BNSF Railway Company (BNSF) filed an application under 49 U.S.C. § 11102(a) for terminal trackage rights over the Rosebluff Industrial Lead (the RIL), track that is jointly owned by Kansas City Southern Railway Company (KCS) and Union Pacific Railroad Company (UP). The RIL connects to the former Southern Pacific Transportation Company's Lafayette Subdivision that is now jointly and equally owned by BNSF and UP. The RIL connects at milepost 223.3 and extends approximately nine miles to the south. KCS and UP filed separate replies in opposition to BNSF's application for terminal trackage rights. CITGO Petroleum Corporation (CITGO) filed a petition to intervene in support of BNSF's petition.

BNSF filed its opening statement on December 31, 2014. UP, KCS, and CITGO filed replies to BNSF's opening statement on August 24, 2015. On October 23, BNSF filed a rebuttal. That same day, KCS and UP filed rebuttals to the reply comments filed by CITGO.

On October 30, 2015, UP submitted a petition requesting that the Board direct UP, KCS, BNSF, and CITGO to file simultaneous final briefs within 30 days after the service date of a Board order. UP requests that the final briefs be limited to no more than 20 pages with no attachments, exhibits, or new evidence. Counsel for UP state that they conferred with counsel for KCS, BNSF, and CITGO prior to filing the petition. Counsel for KCS indicated that KCS supports UP's request, counsel for CITGO indicated that CITGO does not oppose UP's request, and counsel for BNSF indicated that BNSF opposes UP's request. (UP Pet. 2, n. 1.)

In its petition UP argues that final briefs provide an opportunity for the parties to set forth their positions on key issues and to address the proper application of Board precedent in light of the full record. UP argues that the Board regularly permits the filing of final briefs even over the objections of one of the parties.

On November 3, 2015, BNSF submitted a reply to UP's petition. BNSF argues that the Board should deny UP's Petition because BNSF's application for terminal trackage rights has been thoroughly briefed and the petition for final briefs is merely a delay tactic. BNSF notes that, since it filed its application on February 27, 2013, shippers on the RIL have been denied access to direct BNSF service. BNSF argues that, because UP and KCS have filed a collective total of 898 pages of argument and evidence, an additional 20 pages of argument and evidence

would not add to the Board's understanding of the issues. In lieu of final briefs, BNSF suggests that the Board hold a hearing for oral argument if the Board desires further input from the parties.

BNSF's concern that submission of final briefs will unduly delay this proceeding is unfounded, as parties will not be permitted to raise new evidence or arguments. But given the extensive record in this matter, a concise summary of the parties' positions could help focus the Board's analysis of the evidence and arguments, and facilitate a more efficient resolution of outstanding issues. The Board notes that CITGO, the shipper requesting direct service from BNSF, does not oppose UP's request. For these reasons, the Board will grant UP's petition for final briefs. The Board will not schedule an oral argument in this case at this time.

The parties are directed to file final briefs by December 30, 2015. The briefs shall be limited to no more than 20 pages, and no new evidence or argument is permitted. The parties are to summarize the evidence and direct the Board's attention to the issues they deem critical.

It is ordered:

1. UP's petition for final briefs is granted, and the parties are directed to submit final briefs, as described above, by December 30, 2015.
2. This decision is effective on the date of service.

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