

SERVICE DATE – APRIL 14, 2014

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. 1

Digest:¹ The Board directs the parties to engage in mandatory mediation to resolve the issues regarding BNSF Railway Company's access over approximately 9 miles of track formerly operated by Southern Pacific Transportation Company and now jointly owned and operated by Kansas City Southern Railway Company and Union Pacific Railroad Company.

Decided: April 11, 2014

BACKGROUND

On February 27, 2013, BNSF Railway Company (BNSF) filed an application for terminal trackage rights over the Rosebluff Industrial Lead (the RIL). The RIL extends from the former Southern Pacific Transportation Company Lafayette Subdivision between Dawes, Tex., and Avondale, La., that is now jointly and equally owned by BNSF and Union Pacific Railroad Company (UP) (the 50/50 Line) at milepost 223.3, approximately nine miles to the south.²

Kansas City Southern Railway Company (KCS) and UP filed separate replies on March 19, 2013, in opposition to BNSF's application for terminal trackage rights. On April 24, 2013, CITGO Petroleum Corporation (CITGO) filed a petition to intervene in support of BNSF's petition.

On September 23, 2013, BNSF filed a letter informing the Board, among other things, that it "is more than willing to engage in three-carrier discussions" to resolve outstanding access issues.³ On September 27, 2013, UP and KCS filed separate letters in response and individually

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 Decisions, EP 696 (STB served Sept. 2, 2010).

² BNSF Application 2, Feb. 27, 2013.

³ BNSF Letter 2, Sept. 23, 2013.

stated their willingness to engage in negotiations to resolve the underlying issue of BNSF access to the greater Lake Charles, La. area.⁴

The Board will grant CITGO's petition to intervene in this case and direct the parties to engage in mandatory mediation.

DISCUSSION AND CONCLUSIONS

The Board favors the resolution of disputes through mediation in lieu of formal Board proceedings whenever possible. The Board will direct the parties (BNSF, UP, KCS, and CITGO) to engage in mediation pursuant to 49 C.F.R. § 1109.2(a)(2). Within 10 days of the service date of this decision, the Chairman will appoint one or more Board employees to serve as mediator(s). The parties may choose to hire a non-Board mediator in accordance with 49 C.F.R. § 1109.3(a). If the parties choose to use a non-Board mediator, they shall file a joint notice with the Board within 10 days of the service date of this decision. The mediation period shall be 30 days, beginning on the date of the first mediation session. 49 C.F.R. § 1109.3(b). The parties may request to extend mediation by mutual written requests of all parties to the mediation proceeding. Id.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CITGO's petition to intervene is granted.
2. The parties are directed to engage in mediation.

By the Board, Chairman Elliott and Vice Chairman Begeman.

⁴ UP Letter 1, Sept. 27, 2013; KCS Letter 3, Sept. 27, 2013.