

41721
DO

SERVICE DATE – LATE RELEASE JUNE 21, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35524

CANEXUS CHEMICALS CANADA L.P.

v.

BNSF RAILWAY COMPANY

Decided: June 21, 2011

Canexus Chemicals Canada L.P. (Canexus) has filed a complaint with a request for expedited consideration. The complaint asks the Board to issue an order compelling BNSF Railway Company (BNSF) to establish common carrier rates and service terms effective July 1, 2011, between North Vancouver, B.C., and Kansas City, Mo., and between Marshall, Wash., and Kansas City, Mo.

In a decision served June 8, 2011, the Board directed BNSF by June 15, 2011, to submit its argument as to whether BNSF has a legal obligation to provide the specific service to Kansas City that Canexus has requested and to establish an appropriate rate. The Board noted that Union Pacific Railroad Company (UP) has an interest in this matter as a carrier involved in these movements. Accordingly, the Board also directed UP by June 15, 2011, to submit a pleading addressing its legal obligation, if any, to interchange with BNSF at the Spokane, Wash., and Portland, Or., interchanges designated by BNSF.

On June 15, 2011, BNSF and UP filed pleadings with the Board. In its response, BNSF requested Board-supervised mediation and stated that it would be willing to extend the termination date for the existing temporary rates from June 30 to July 31, 2011, in the event mediation was held.

By a decision served June 16, 2011, the Board announced that it would hold oral argument on Thursday, June 23, 2011, in this proceeding. The Board also directed Canexus and UP to indicate by Monday, June 20, 2011, whether they agree to participate in mediation. In the decision, the Board stated that in the event Canexus and UP agreed to Board-supervised mediation, the Board would postpone the scheduled oral argument. On June 20, 2011, UP agreed to Board-supervised mediation, but Canexus stated in a letter to the Board that it “respectfully informs the Board that it does not believe this particular matter is appropriate for Board-sponsored mediation, primarily because of the presence of a confidential contract between Canexus and UP to which BNSF is not a party.”

The Board will provide Board-supervised mediation in this proceeding. Mediation between UP and BNSF may bring about a solution to the underlying problem here, i.e., the

interruption of interline service between Canexus and its delivery destinations in Illinois, Arkansas, and Texas due to a disagreement between carriers as to a reasonable point of interchange. Resolution of the point of interchange may satisfy Canexus' concerns or at least frame the issue for Board resolution. Canexus is encouraged to participate in such mediation and should inform the Board by June 24, 2011, if Canexus changes its position regarding mediation. The Board will direct the mediator to take reasonable action to ensure the confidentiality of contract terms between UP and Canexus. As mediation will take place, the oral argument in this matter scheduled for June 23, 2011, will be postponed pending further Board order.

The Board mediator will contact the participating parties by June 27, 2011, to set a time for the mediation to be held at the Surface Transportation Board Headquarters, at 395 E Street, S.W., Washington, DC.

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

It is ordered:

1. Oral argument in this proceeding will be postponed pending further Board order.
2. The Board mediator shall contact the participating parties by June 27, 2011, to set a time for the mediation to be held at the Surface Transportation Board Headquarters, at 395 E Street, S.W., Washington, DC.
3. Canexus should inform the Board in writing by June 24, 2011, if it chooses to participate in the mediation.
4. This decision is effective on the date of service.

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