

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823

August 29, 2014

236556

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
August 29, 2014
Part of
Public Record

Re: Finance Docket No. 32760 (Sub-No. 46)
BNSF Railway Company – Terminal Trackage Rights – The Kansas City
Southern Railway Company And Union Pacific Railroad Company

Dear Ms. Brown:

On August 25, 2014, BNSF yet again requested the Board to set a procedural schedule for processing its terminal trackage rights application. The Kansas City Southern Railway Company (“KCS”) opposes this request as premature, as BNSF has yet to seriously attempt to follow the path the Board laid out in Decision No. 63.¹ If negotiations fail, the next step is arbitration. *Id.*, slip op. at 10, n. 29. KCS would contend, however, that negotiations have not yet seriously begun. Despite repeated requests, BNSF has yet to submit a detailed operating and infrastructure plan for consideration (explicitly required by even the UP-BNSF settlement agreement that BNSF claims gives it the right to use the KCS-UP joint property) or to offer KCS compensation for such use. Such a plan would substantially facilitate further discussion and negotiation.

Until such time as BNSF provides additional information and follows the proper procedural steps, it is premature for the Board to begin a terminal trackage rights proceeding. Further information could facilitate meaningful discussion. If all of those steps, including arbitration, fail, Decision No. 63 then allows for a terminal trackage rights proceeding.

¹ Union Pacific-Control-Southern Pacific, STB Docket FD 32760 (STB served Dec. 4, 1996) (“Decision No. 63”).

Cynthia T. Brown
August 29, 2014
Page 2 of 2

If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

cc: Parties of Record