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ENTERED
Office of Proceedings
May 9, 2018
Part of
Public Record

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May 9, 2018

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

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,

In a Decision served May 1, 2018, corrected by a decision served May 4, 2018, (collectively “May 4th Decision”), the Surface Transportation Board (“Board”) denied the motion of The Kansas City Southern Railway Company (“KCS”) to dismiss BNSF Railway Company’s (“BNSF”) January 12, 2018 petition requesting the Board to establish conditions of use and compensation for BNSF to directly serve a LyondellBasell (“Lyondell”) facility in the West Lake Charles, Louisiana area (“Petition”). The May 4th Decision established a procedural schedule to govern the remainder of the proceeding. The May 4th Decision also reminded the involved parties that the Board is available to assist the parties in reaching a negotiated solution through Board sponsored mediation and specifically stated that the Board “favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings.” See May 4th Decision, slip op. at 9.

After carefully considering Decision No. 3 and the May 4th Decision, KCS is writing to notify the Board that it wishes to participate in Board sponsored mediation to attempt to resolve the dispute among the involved parties.¹ KCS understands that mediation was unsuccessfully tried several years ago at the beginning of this proceeding when BNSF sought access to serve

¹ To avoid potential unnecessary efforts of having both to mediate and respond at the same time, KCS would respectfully request that the procedural schedule be tolled during the mediation period.

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CITGO. However, several decisions have been issued since that time which provide general guidance and form a framework to govern further discussions. The parties' settlement discussions pursuant to Decision No. 3 also provide a further basis for the parties to work toward a mediated solution. In light of the Board decisions and the previous settlement discussions, KCS believes that Board sponsored mediation should be given another chance to help reach a negotiated solution.

If BNSF or Union Pacific Railroad Company ("UP") are not willing to participate in mediation, KCS respectfully requests that the Board extend the procedural schedule for the reasons explained in UP's petition for reconsideration and to allow KCS to complete its own discovery.² KCS filed its discovery requests immediately after the Board issued its May 1st decision, having sought to avoid discovery that would have entailed unnecessary time and expense to BNSF and KCS had the Board granted KCS's motion to dismiss. BNSF's response to KCS's discovery is due on May 16, 2018. As currently scheduled, KCS must respond to BNSF's Opening Comments by May 31st. This gives KCS only 20 days to review whatever additional information BNSF produces on May 11 and only 15 days to review BNSF's responses to KCS's discovery. Considering that BNSF appears to have taken over three months to respond fully to UP's discovery, twenty days from the submission of BNSF's supplement to the Petition is simply insufficient time to complete discovery, review the record, and prepare a response to the very serious legal and operating issues. KCS requests a period of 45 days from May 11th, or until June 25th, to respond to BNSF's supplemented Petition.

In closing, KCS believes that Board sponsored mediation should be given another chance. In light of the Board's decisions in this matter, mediation will allow the parties a chance to work out an operating and compensation plan acceptable to all of the parties. However, if not all parties are willing to engage in mediation, KCS needs additional time to gather evidence, evaluate the evidence, and present its reply to the Board.

Sincerely,



William A. Mullins

cc: David C. Reeves
Parties of Record

² Shortly after the Board served the May 4th Decision, UP filed for reconsideration of the procedural schedule and requested additional time. On May 7, 2018, BNSF filed a reply to UP's request for reconsideration. If mediation is not agreed to by BNSF and UP, KCS supports additional time being added to the procedural schedule.