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SERVICE DATE - MAY 13, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33877 (Sub-No. 1)

ILLINOIS CENTRAL RAILROAD COMPANY–PETITION FOR CROSSING AUTHORITY–IN  
EAST BATON ROUGE PARISH, LA

Decided: May 9, 2002

By petition filed on July 16, 2001, Illinois Central Railroad Company (IC or Petitioner) requests that we issue an order, pursuant to 49 U.S.C. 10901(d), determining its authority to cross tracks owned by The Kansas City Southern Railway Company (KCS or Respondent) in connection with IC's construction and operation of an approximately 3.2-mile line of railroad in East Baton Rouge Parish, LA, to serve ExxonMobil Chemical Company's Baton Rouge Polyolefins plant (BRPO).<sup>1</sup> By decision served on October 25, 2001, we denied a motion by KCS to dismiss the crossing petition. In that decision, we also instituted this line crossing proceeding and established a procedural schedule for the filing of verified statements.<sup>2</sup> Because IC's petition was an evidentiary submission, it was treated as IC's opening statement. KCS filed its reply to the petition on November 30, 2001, and IC filed a rebuttal statement on December 18, 2001.

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<sup>1</sup> In Illinois Central Railroad Company–Construction and Operation Exemption–In East Baton Rouge Parish, LA, STB Finance Docket No. 33877 (STB served Oct. 25, 2001), we conditionally granted IC an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate the line, subject to completion of environmental review and issuance of a further decision addressing the environmental impacts of the proposal. In a further decision served on January 23, 2002, we granted final approval of the exemption, subject to environmental mitigation measures, and made the exemption effective on February 22, 2002. KCS filed a petition for judicial review of our decision in the construction case in KCS v. STB, U.S.C.A. D.C. Cir. No. 02-1068, but filed an unopposed motion to dismiss the court case after the court denied its request for a judicial stay.

<sup>2</sup> In a decision served on November 20, 2001, we granted a motion by IC to quash depositions sought by KCS, denied a request by IC for an order barring further discovery from IC, and extended the due dates for filing statements.

## IC'S PROPOSAL

The proposed line would run between IC's Maryland Industrial Lead and BRPO. Roughly parallel to the Maryland Industrial Lead, lying between that IC track and BRPO, is KCS's "D Line." IC's proposed new line would divert from the Maryland Industrial Lead at approximately milepost 359.4, cross KCS's D Line at a point approximately 1300 feet south of Thomas Road, and extend to the western side of BRPO. (KCS currently serves the facility from the eastern side.) The proposed new line would be single track and would be operated as an industrial lead, with a speed limit of 10 miles per hour.

At the proposed crossing point, KCS's D Line also is single track. The proposed line would cross KCS's line at grade at an angle of approximately 40 degrees via a standard railroad crossing diamond to be installed in KCS's track. The crossing diamond would be prefabricated off site at IC's expense and then transported to the site to be welded into KCS's track. The diamond would be constructed with rail of a weight equal to or greater than the rail in KCS's track at the crossing site and the rail to be used by IC in its new line. IC characterizes the installation as a relatively common railroad procedure and estimates that it would require 4 to 6 hours of work. IC says that it would do so with its own labor at its own expense in consultation with KCS (so as to minimize any disruption of KCS's operations). Alternatively, IC is agreeable to having KCS install the crossing with KCS's employees at Petitioner's expense.

IC plans to equip the proposed crossing with an automatic interlocked signal system similar to that currently in use on the D Line where lines of IC and KCS cross at Scotlandville, LA, approximately 2 miles to the southeast of the proposed crossing. When a train approaches a crossing using such a signal system, and no other train is present, circuitry is activated, a green signal appears, and the train can proceed. With the proposed signal system, IC crews would have to activate the signal circuitry by pressing a button. A KCS train approaching the crossing when there is no conflicting IC movement would automatically receive a green signal and could proceed without stopping. A KCS train would be delayed only if an IC train already had activated the circuitry. The same arrangement is in effect at the crossing at Scotlandville, except that there it is the KCS crew that must stop and press a button.

As part of the signal installation process, four sets of insulated rail joints would be installed in KCS's track. The joints would be prefabricated off site. It would take 2.5 to 3 hours to install each joint. If necessary, the joints could be installed incrementally, with each component taking no more than 1 hour. In close consultation and coordination with KCS flagmen or dispatchers, the installation work could be undertaken when no KCS trains are expected for the next hour. IC indicates that testing of the signal system would not require that KCS's track be taken out of service; testing could be

suspended if a train were to come through and then be resumed after it had passed. IC regularly engages in the same testing practice when performing routine periodic testing at Scotlandville.

IC would serve BRPO from the west using a “drop and pull” operation, i.e., it would spot inbound cars on designated tracks within the plant and pick up outbound cars on other designated tracks.<sup>3</sup> IC service would take place only between the hours of 10 p.m. and 5 a.m.<sup>4</sup> IC expects to use the crossing twice a day, once on a trip to the plant and once on the return trip. An IC train would consist of a locomotive and 30 to 35 cars, assuming that IC would handle the entire current output of BRPO. The train, operating at 10 miles per hour through the crossing, would take approximately 4 minutes to clear the crossing, from the time the train triggers the signal circuitry for the crossing to the time when the signals are reset after the train has passed. On a typical day, if IC handled all the current BRPO output, IC would block KCS’s line for approximately 8 minutes out of each 24 hours. If BRPO production were to double and IC were to obtain all of BRPO’s traffic, IC would continue to operate a single round trip, using a train with two locomotives. IC then would block the KCS line for approximately 16 minutes a day. From its observations, IC has determined that KCS operates 9 or 10 movements a day past the location of the crossing, including an average of 2 daily movements between the hours of 10 p.m. and 5 a.m.

IC indicates that it would bear the entire cost of furnishing and installing the crossing and signals, as well as the cost of maintaining them. IC would reimburse KCS for all costs incurred in the installation and maintenance of the crossing diamond and signal system. Finally, IC states that it would compensate KCS for the crossing in accordance with Board precedent.

#### PRELIMINARY MATTER

On December 20, 2001, KCS filed a motion to strike portions of IC’s rebuttal. IC replied in opposition to the motion on December 31, 2001. KCS moves to strike those portions of IC’s rebuttal in which IC discusses the installation and testing of an interlocking signal system and the system’s interface with grade crossing signals. KCS argues that IC failed to disclose critical facts in those areas in its petition and should not be permitted to fill in the evidentiary gaps on rebuttal. KCS asserts that, should the Board allow IC’s new evidence and argument into the record, we should permit KCS to file a responsive pleading.

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<sup>3</sup> Plant crews would move empty and loaded cars on plant grounds.

<sup>4</sup> KCS serves the plant from the east, also using a drop and pull operation, generally between 3 p.m. and 8 p.m.

The motion to strike will be denied, and no additional pleading will be permitted. IC indicated in its petition that it planned to install an automatic interlocked signal system to govern movements over the crossing. And, as we stated in our November 20 decision addressing the discovery issue, “KCS should know as much as IC does about . . . the installation and operation of interlocking signal systems.” Decision at 3. KCS was aware of, and has had the opportunity to discuss, the relevant issues in this area. IC, in its rebuttal, addresses the concerns raised by KCS. There is nothing improper in this, and we see no reason to allow a surrebuttal.

### DISCUSSION AND CONCLUSIONS

Under section 10901(d)(1), no rail carrier may refuse permission for a constructing carrier to cross its property if: (1) the construction does not unreasonably interfere with the operation of the crossed line; (2) the operation does not materially interfere with the operation of the crossed line; and (3) the owner of the crossing line compensates the owner of the crossed line. In addition, under section 10901(d)(2), if the parties disagree on the operating terms or the amount of compensation, either party may submit the dispute to the Board for determination. As discussed below, IC has met the statutory criteria at 49 U.S.C. 10901(d) for approval of its crossing petition.

Construction. As noted above, IC asserts that the KCS D Line would be out of service for 4 to 6 hours for installation of the crossing diamond. IC states that the installation and testing of the signal system will not result in any delays to KCS trains.<sup>5</sup>

KCS does not claim that any interference with its operations would result from installation of the crossing or installation and testing of the signal system. Rather, KCS complains that IC has omitted critical information from its petition, and that these deficiencies have prevented Respondent and the Board from determining the amount of interference likely to result from the proposal. We believe, contrary to KCS’s position, that IC has, in fact, adequately addressed this issue. In any event, we do not see why KCS, presumably as familiar as IC with the construction, installation, and testing requirements, could not have estimated installation and testing times on its own and presented arguments of operational interference, had it anticipated any.

KCS asserts that IC’s petition fails to discuss the problems that could result from the proximity of U.S. Highway 61 and Thomas Road to the installation of the proposed interlocking signal system. Unless careful planning and coordination is undertaken, KCS argues, the systems required to provide

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<sup>5</sup> In its rebuttal, IC acknowledges that the installation of four sets of insulated joints in KCS’s track would require the D Line to be out of service for several noncontiguous periods of 1 hour or less. IC adds, however, that this will result in no delays to any KCS trains.

highway signals warning motorists of approaching trains at each grade crossing will interfere with IC's proposed interlocking signal system. IC has replied that the design of the signal system will appropriately incorporate the required interface circuitry, and that the arrangements will have no effect on the amount of time KCS's line is taken out of service. We find that IC has adequately addressed this issue and has established that the proposed construction and installation would not unreasonably interfere with the operation of the crossed line.

Operation. IC asserts that its trains would block the crossing for approximately 8 minutes a day between the hours of 10 p.m. and 5 a.m.—a 7-hour period during which KCS makes an average of 2 daily movements. IC emphasizes that, whereas KCS serves BRPO from the east during the afternoon and evening, IC would serve the plant from the west during the late night and early morning hours. IC thus believes that its operations would not materially interfere with those of KCS on the D Line.

KCS argues in opposition that, as IC's new track will cross both U.S. Highway 61 and KCS's D Line, and the D Line is almost 3 feet higher than the shoulder of the highway, the D Line might have to be lowered to allow the crossing. KCS asserts that any reduction in the height of its track would cause unacceptable operating problems. A reduction in elevation of more than 1 foot, KCS asserts, would cause unacceptable vertical curves north of the crossing diamond near Thomas Road.

KCS's concern in this area is unfounded. IC states on rebuttal that the crossing will result in no elevation change in KCS's track. Petitioner believes that KCS has failed to account for the fact that the new line would cross the D Line at an angle of approximately 40 degrees. According to IC, the actual length of the track segment between the highway and the D Line would be approximately 230 feet, not the 160 feet estimated by KCS, providing a gradient well below IC's standard maximum grade requirement. IC adds, however, that it plans to make surface modifications to the highway<sup>6</sup> to conform to the height of the rail in IC's track at the point of the grade crossing.

KCS also expresses concern regarding the impact of a new car storage yard that KCS says IC will have to build. KCS contends that, as ExxonMobil will need more storage when IC completes its construction, and IC does not currently have storage facilities in the Baton Rouge area, IC has a "foreseeable and imminent need" to build a storage yard, presumably on the former "tank farm" property adjacent to BRPO. KCS argues that the location of the yard will likely increase IC's use of the proposed crossing well above the projected 2 trains a day. KCS also expresses its concerns that activity in the yard, such as switching that results in "poke outs" that may encroach on the limits of the signal interlocking, may interfere with KCS's use of the crossing diamond and of its D Line.

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<sup>6</sup> IC states that its plans for the crossing have been submitted for approval to the Louisiana Department of Transportation.

As we found in our review of IC's proposed construction,<sup>7</sup> KCS's arguments regarding a storage facility are speculative and unsupported. IC indicates that, while the tank farm property, along with many other locations, may be suitable for a car storage facility, petitioner has no current plans to construct such a facility. In any event, IC agrees to stipulate that, if a tank farm yard were ever constructed, it would be designed so that switching operations there would not extend into the interlocking limits of the crossing.

KCS next argues that, because IC has failed to account for any traffic it will move for shippers other than ExxonMobil, Petitioner's estimates of the traffic that will move over the crossing are too low. For example, KCS asserts, IC has a significant possibility of acquiring 500 to 600 cars of new traffic from Deltech Corporation and additional traffic from Dravo Lime. Further, KCS contends that, as Petitioner has failed to account for any traffic increases KCS will experience in the coming years, IC's estimates of the traffic KCS will move over the new crossing are also understated. KCS anticipates that it will increase its carloads on the D Line upwards of 11,000 cars per year within the next few years. Respondent also cites plans to construct two transload facilities that will generate traffic for movement over the D Line. Moreover, KCS expresses the belief that a planned BRPO expansion will result in approximately 3,000 new rail car movements per year, for which KCS and IC will compete.

KCS's arguments in this area are unconvincing. IC has shown that KCS's numbers double-count significant traffic. As IC notes, while KCS claims that it will gain upwards of 11,000 carloads of traffic on the D Line in the near future, KCS makes no adjustment for the 9,000 carloads of existing KCS BRPO traffic that KCS believes will be diverted to IC. Similarly, IC notes that KCS surmises that IC might handle existing Deltech traffic, but KCS does not reflect the diversion of any such traffic from KCS's existing base.

In any event, IC asserts that there would be no material interference with KCS's operations even if all of KCS's conjectural traffic projections were used. According to Petitioner, if IC were to add a second round trip movement each day (or double the length of its trains), it would block the crossing for a total of only 16 minutes a day. IC estimates that KCS would operate a total of 12 daily train movements over the crossing—the 10 previously identified plus a hypothetical second round trip. On average, then, every 6 hours KCS would need to move 3 trains over the crossing, and IC would need use of the crossing for 4 minutes (or a 16 minute per day total).<sup>8</sup> We agree with IC that, even using optimistic traffic projections, any interference would not be material.

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<sup>7</sup> See STB Finance Docket No. 33877, decision served Feb. 20, 2002, at 6-7.

<sup>8</sup> We note, in addition, that delays to KCS trains would be minimized since IC's train movements to and from BRPO are scheduled to occur between 10 p.m. and 5 a.m., when KCS's operations are significantly reduced.

Finally, KCS argues that IC's assertions of minimal interference are premised on an operating schedule that could be easily changed. KCS contends that the agreement between ExxonMobil and IC represents nothing more than the parties' estimate of when IC's operations will be conducted—i.e., IC's 10 p.m. to 5 a.m. operating window is merely a guess. This argument also lacks merit. IC credibly has responded that the nighttime operating window is driven by service requirements at BRPO. IC plans to serve BRPO and to cross the D Line at night because KCS serves BRPO during the day. In any event, even were IC to operate during the day, the record before us does not show that Petitioner's blocking the crossing for 8 or even 16 minutes would materially interfere with KCS's operations.

For all of these reasons, IC has established that the proposed operation would not materially interfere with the operation of the crossed line.

Compensation and Agreements. As noted, IC has agreed to bear the cost of furnishing, installing, and maintaining the crossing and signals. It also has agreed to compensate KCS for the crossing in accordance with Board precedent.

KCS argues that we should require Petitioner to obtain KCS's consent to its construction plans. KCS adds that, if it refuses to grant its consent, the Board should then permit IC to bring the matter to the Board for review. KCS argues further that IC has failed to propose any terms for operation of the new crossing. Respondent contends that IC should not be allowed to operate over the crossing until an operating agreement has been completed. Again, KCS suggests that, should they be unable to agree on the terms, the parties should be required to submit their dispute to the Board. Finally, KCS complains that IC has failed to identify all the elements of compensation due KCS. It views IC's statements regarding compensation as perfunctory, and KCS asserts that the Board should require a further proceeding in order to allow the parties to present evidence and argument regarding the elements of compensation.

KCS has not justified its preapproval request, which clearly is not required by the statute or needed for us to make the determinations that are required by the statute. Rather, we find that IC has met its burden of proof under section 10901(d)(1), and we see no need to delay the construction pending resolution of remaining issues. Construction of the crossing may begin immediately. See Public Service Company of Colorado—Petition For Crossing Authority Under 49 U.S.C. 10901(d), STB Finance Docket No. 33862 (Sub-No. 1) (STB served Mar. 22, 2001), and Louisville & Jefferson Co & CSX Const. & Oper. Jeff. KY, 4 I.C.C.2d 749, 755 (1988). We expect the parties to negotiate in good faith concerning the remaining issues. Under section 10901(d)(2), the parties may return to the Board if the good faith negotiations do not result in an agreement.

In sum, we find that IC's construction of its proposed crossing will not unreasonably interfere with the operation of the crossed line, 49 U.S.C. 10901(d)(1)(A); that IC's operation of the crossing will not materially interfere with the operation of the crossed line, 49 U.S.C. 10901(d)(1)(B); and that IC must compensate KCS for crossing its line, 49 U.S.C. 10901(d)(1)(C). If the parties are unable to agree on the terms of operation or the amount of payment, either party may submit the matters in dispute to the Board for determination under 49 U.S.C. 10901(d)(2). Construction and operation need not be delayed pending resolution of any disputes concerning terms of operation or amount of payment. IC may build its line across that of KCS and need not await resolution of any dispute with KCS over terms of operation or amount of payment. We will reserve jurisdiction over the proceeding until such time as the parties have reached a crossing agreement.

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

It is ordered:

1. KCS's motion to strike is denied.
2. IC's petition under 49 U.S.C. 10901(d) is granted.
3. Petitions to reopen must be filed by June 3, 2002.
4. The Board reserves jurisdiction over this proceeding until such time as the parties have reached a crossing agreement.
5. Within 30 days of service of this decision, the parties shall negotiate the remaining terms for the crossing, and IC shall file a report with the Board at the end of this term.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary