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SERVICE DATE - LATE RELEASE JULY 20, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33780

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
— TRACKAGE RIGHTS EXEMPTION —
GATEWAY WESTERN RAILWAY COMPANY
AND
GATEWAY EASTERN RAILWAY COMPANY

Decided: July 20, 1999

We are granting a 60-day stay of the trackage rights exemption to provide time for further examination.

BACKGROUND

By notice filed on July 14, 1999, The Kansas City Southern Railway Company (KCS), Gateway Western Railway Company, and Gateway Eastern Railway Company (Petitioners) invoke the class exemption at 49 CFR 1180.2(d)(7) to allow KCS to operate over, and to serve all shippers on, the entire systems of both Gateway Western Railway Company and Gateway Eastern Railway Company (hereafter collectively, Gateway). Gateway totals approximately 478 miles. Petitioners assert that (1) the trackage rights in question are based on a written agreement between the parties and (2) the trackage rights are not filed as part of a responsive application in a rail consolidation proceeding. Petitioners also assert that the transaction will be consummated on "approximately July 21, 1999."

By petition filed on July 19, 1999, Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), requests that we stay operation of the exemption pending the filing and disposition of a petition to reject or to revoke it.

On July 20, 1999, Petitioners filed a reply in opposition to UTU-IL's petition for stay, asserting that UTU-IL has not presented adequate grounds for granting a stay, and stating that, if the Board were subsequently to determine that additional procedural labor protections were necessary, it would stipulate to imposition of certain additional employee protective conditions.

DISCUSSION AND CONCLUSION

After examining the proposed trackage rights agreement and UTU-IL's petition for stay,¹ we believe that a brief, 60-day housekeeping stay would be appropriate to permit us to examine the issues in greater detail. The trackage rights agreement at issue is different enough from typical trackage rights agreements to cause us to want to examine it further. In particular, section 6 of the agreement provides for a transfer of management and operation of all of the Gateway trackage under certain conditions. Such a transfer would appear to involve more than trackage rights (and thus might go beyond our trackage rights exemption), and could well require further authorization from us under section 11323. Accordingly, as suggested by applicants, we are providing a 20-day period for the filing of petitions for revocation, and 10 days for KCS to file a reply.² Because applicants have indicated that they do not actually intend to go forward with trackage rights operations immediately and will initially undertake to exercise only haulage rights under this agreement, this housekeeping stay will not harm them.

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

It is ordered:

1. The effective date of the exemption is stayed until September 19, 1999.
2. Petitions to revoke must be filed by August 9, 1999. Replies to any petition to revoke must be filed by August 19, 1999.
3. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

¹ We note that UTU-IL has not made a convincing case of demonstrating harm. UTU-IL has not even indicated what employees it represents, much less how they would be harmed if this transaction were to go forward. We expect that UTU-IL will further explain these matters in its petition for revocation.

² UTU-IL has shown no need for discovery here, as the trackage rights agreement is available to its attorney for inspection. Nothing further has been shown to be required.