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SERVICE DATE - OCTOBER 25, 2001

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: October 18, 2001

By petition filed on July 16, 2001, Illinois Central Railroad Company (IC) requests that we issue an order, pursuant to 49 U.S.C. 10901(d), to allow IC to cross tracks owned by The Kansas City Southern Railway Company (KCS). On July 31, 2001, KCS filed a motion to dismiss the petition, and, on August 20, 2001, IC replied.¹

The request relates to IC's proposal to construct and operate an approximately 3.2-mile line of railroad in East Baton Rouge Parish, LA, to serve a plant owned by ExxonMobil Chemical Company situated there. In STB Finance Docket No. 33877, Illinois Central Railroad Company—Construction and Operation Exemption—In East Baton Rouge Parish, LA (petition for exemption filed Nov. 29, 2000), IC has petitioned for 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. KCS opposes the exemption petition. By a separate decision being issued today in that proceeding, we have conditionally granted the exemption sought by IC, subject to completion of environmental review and consideration of environmental impacts.

Under section 10901(d)(1), the Board may authorize a carrier to cross over the line of another rail carrier 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.

In its petition, IC asserts that KCS has declined to allow it to cross KCS's trackage and that, without the section 10901(d) authority requested, the proposed build-in project would be blocked. IC requests that we institute a proceeding under the modified procedure to consider the matter. Petitioner addresses the pertinent statutory criteria in its pleading, and it asks that we treat its petition as its opening evidentiary statement. IC also asks that we adopt a procedural

¹ On August 24, 2001, KCS filed a motion to strike IC's reply, arguing that the pleading is essentially an impermissible reply to a reply and constitutes an attempt to stifle KCS's participation in the related construction exemption proceeding. IC replied. The motion is meritless and will be denied.

schedule allowing 30 days for the filing of a reply by KCS and 20 days for the filing of an IC rebuttal.

KCS moves to dismiss the petition as premature under the statute and Board precedent. It argues that a carrier seeking authority to cross another carrier's rail line must make an initial showing that: (1) the Board has granted conditional construction authority, and (2) that the carrier whose line would be crossed has refused to voluntarily negotiate crossing issues. KCS contends that IC has not made the required showing, as the Board has not yet acted on its construction and operation exemption petition, and KCS has not declined to negotiate a crossing agreement—it has only suggested that the parties await the resolution of unresolved issues pending before the Board. In the event its motion to dismiss is not granted, KCS argues, the Board should institute a proceeding to consider crossing issues only after a conditional construction and operation exemption is granted.

The motion to dismiss will be denied. As previously noted, we have today issued a decision conditionally granting IC's construction and operation exemption, and we see no reason to delay building a record and commencing consideration of the issues presented here. In the event the sought construction exemption is ultimately denied, this proceeding can and will be dismissed. In the event the exemption is granted in full following environmental review, we will be able to expeditiously handle and resolve the matters presented here that might block the construction. This course of action is consistent with the goals of the Rail Transportation Policy at 49 U.S.C. 10101(2), (7), and (15).

As to KCS's second point, we will consider holding this proceeding in abeyance should the parties submit a certification that good faith negotiations are under way.

We have considered KCS's other arguments and found them to be without merit. We therefore will institute a crossing proceeding to be handled under the modified procedure at 49 CFR 1112 and will adopt the filing schedule proposed by IC. IC's petition will be treated as an opening statement.

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 dismiss the crossing petition is denied.
2. KCS's motion to strike IC's reply is denied.
3. IC's crossing petition will be handled under the modified procedure.
4. KCS's reply to IC's petition is due on November 26, 2001.

5. IC's rebuttal is due on December 14, 2001.
6. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary