

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: November 20, 2001

By petition filed on July 16, 2001, Illinois Central Railroad Company (IC) requested 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).¹ Under section 10901(d)(1), we 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 a decision served October 25, 2001, in this proceeding, we denied a motion by KCS to dismiss IC's petition and instituted a proceeding. We treated IC's petition as an opening statement and, consistent with the procedural schedule proposed by KCS, set November 26, 2001, as the due date for KCS's reply to the petition and December 14, 2001, as the due date for IC's rebuttal.

On November 16, 2001, IC filed an "Emergency Motion for Protective Order" under 49 CFR 1114.21(c). IC states that, on November 15, KCS served it with notices of deposition for the two IC witnesses who submitted verified statements with IC's crossing petition that had been filed several months earlier on July 16, 2001. IC has submitted copies of the notices. KCS wishes to depose J. A. Sensing, Manager of Business Practice and Contracts for IC's Gulf Division, and Terry R. McManaman, Vice President - Gulf Division for IC. The depositions are

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 decision issued October 25, 2001, in that proceeding, we conditionally granted the exemption sought by IC, subject to completion of environmental review and the consideration of environmental impacts in a further decision.

scheduled for November 21, 2001.

IC requests that the Board issue an order quashing the depositions, barring KCS from seeking any further discovery in this proceeding, and confirming the procedural schedule set forth in our October 25, 2001 order. IC contends that KCS is seeking merely to delay the disposition of IC's petition. IC argues that KCS could have initiated discovery as long ago as mid-July and, in any event, should have sought discovery immediately upon the issuance of the October 25, 2001 procedural schedule, rather than waiting 3 weeks. Further, IC asserts that there is no reason why depositions are necessary for KCS to reply to the evidence IC submitted with its crossing petition.

KCS replied to IC's motion yesterday. KCS argues that it did not delay filing its request for discovery. It states that it did not file in response to IC's July 16, 2001 petition because it had sought to dismiss that petition. KCS maintains that it waited 3 weeks after we issued our procedural schedule before seeking discovery in order to permit its experts to review IC's July 16 petition. KCS also argues that we should extend the procedural schedule established in our October 25, 2001 order. It asserts that such an extension would not delay a decision in this case because the environmental review process required in the construction case has not been completed. Until it is, KCS states, we cannot authorize construction and, until we do that, we cannot authorize IC to cross KCS's line. Thus, KCS argues, IC would not be prejudiced by any delay occasioned by an extension of the procedural schedule. KCS asks us to permit it to file its reply by December 21, 2001, and to permit IC to file its rebuttal by January 14, 2002.

DISCUSSION AND CONCLUSIONS

We will grant IC's request to quash the motions for deposition.² We note at the outset that it is true that KCS has not proceeded promptly. The pendency of its motion to dismiss, which we found to be lacking in merit, did not preclude KCS from seeking discovery against IC. KCS merely chose to wait. Moreover, KCS would have us believe that it did not even bother to review IC's July 16 filing until after we had denied KCS's motion to dismiss it on October 25. Even if that were so, KCS did not need 3 weeks beyond that date to decide that it needed to depose IC's two witnesses.

But it is not just KCS's lack of a prompt request that leads us to deny its proposal to depose IC's witnesses. More importantly, KCS has offered no justification for doing so. In its reply to IC's motion to quash, KCS states:

The verified statements of each of IC's witnesses contains glaring omissions which have prevented KCS and the Board from being fully appraised of the

² IC's request for an order barring all further discovery from IC in this proceeding will not be granted.

impact of what IC proposes. For example, IC's witnesses say nothing about the delay that will be inherent in the construction of an interlocking signal system and the potential for disruption of KCS's operations.

IC's witnesses, however, have testified that KCS's operations over the line will be interrupted only 4-6 hours for the installation of a crossing diamond. IC has further testified that its operations over the KCS line will be limited to one round trip of a 30-35-car train daily. According to IC, this would block KCS's line for, at most, 16 minutes out of each 24-hour period.

KCS should know as much as IC does about the operation of trains, the installation and maintenance of crossing diamonds, and the installation and operation of interlocking signal systems. And KCS knows a great deal more than IC about KCS's operations. In short, if KCS wishes to argue that the proposed construction unreasonably interferes with its operations or that the proposed operations materially interfere with its own, it does not appear to require any further information from IC in order to make those arguments. Nothing in the record before us indicates that it does.

We will not, therefore, order IC to comply with KCS's proposed depositions. Because we are not ordering discovery, we see no need for as long an extension in the procedural schedule as sought by KCS. That carrier's argument that the pendency of the environmental process means that such an extension would not affect the timing of our decisions in this case is belied by the record. Board staff issued an Environmental Assessment (EA) on July 20, 2001. Comments on the EA were due August 20, 2001. We anticipate concluding the environmental review process in the near future and issuing a final decision in the construction case. Thus, the extension in the procedural schedule sought by KCS could well delay the issuance of a decision on IC's crossing petition.

Nevertheless, to ensure that KCS has adequate time to respond to IC's opening statement, we will provide a short extension in the due date for KCS's reply. It will be due November 30, 2001, rather than November 26, 2001. The due date for IC's rebuttal will be extended to December 18, 2001. If IC wishes to file sooner and thus close the record ahead of schedule, it may, of course, do so.

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

It is ordered:

1. IC's motion to quash the depositions sought by KCS is granted.
2. IC's request for an order barring further discovery from IC in this proceeding is denied.

3. KCS's reply to IC's petition is due on November 30, 2001.
4. IC's rebuttal is due on December 18, 2001.
5. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary