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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 14)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—
ADVERSE DISCONTINUANCE APPLICATION—A LINE
OF ARKANSAS & MISSOURI RAILROAD COMPANY

Decided: November 24, 1998

By petition filed October 20, 1998, Arkansas & Missouri Railroad Company (AMR) seeks waiver of certain regulations requiring the filing of specific information in an adverse discontinuance application it intends to file at a future date.¹ AMR states that it intends to terminate an agreement it has with The Kansas City Southern Railway Company (KCS) that allows KCS to operate overhead trackage rights over an approximately 5.5-mile segment of AMR's rail line located in Sebastian County, AR, and LeFlore County, OK,² and file an application with the Board for the adverse discontinuance of the overhead trackage rights. On November 5, 1998, KCS filed a motion to dismiss the petition for waiver. Alternatively, KCS requests that the waiver petition be held in abeyance because AMR has made no effort to gather the required information or provide the requisite notice. On November 9, 1998, AMR filed a reply to the motion to dismiss.

By decision served November 13, 1998 (November 13 decision), it was determined that AMR did not provide sufficient information to justify granting the requested waivers in their entirety. Accordingly, AMR was asked to provide additional information regarding the potential impact that a discontinuance would have on shippers and communities located off the line and to provide more information about AMR's future plans involving the overhead service now being provided by KCS, including whether or not it plans to replace that service. In addition, AMR was invited to provide any other information that would assist the Board in assessing the relevance of the regulatory requirements that it seeks to have waived.

On November 17, 1998, AMR filed a reply to the decision. AMR argues that Board regulations do not require applicants seeking abandonment authority to include information concerning shippers and communities not located on the line and that, accordingly, it has not asked to be relieved of such "nonexistent" requirements. AMR states that it will handle all bridge traffic

¹ On November 5, 1998, AMR filed a Notice of Intent to Discontinue Service. It states that it intends to file its application on or about November 25, 1998.

² The line extends from AMR milepost 417.0 near the crossing of Navy Road in Fort Smith, AR, to AMR milepost 422.5 near the crossing of Arkansas Highway 540 in Fort Smith, AR.

formerly handled by KCS with its own crews and power and it alleges, therefore, that such service will not be lost and that there will be no adverse impact on overhead shippers or communities.

As discussed in the November 13 decision, information that would assist the Board in assessing the effects on overhead shippers of a discontinuance of KCS operations over the line is germane to this proceeding. Accordingly, to the extent the waiver request covers information about service to overhead shippers, it will be denied. While AMR has now indicated that it intends to replace KCS' service with its own, its application should address the anticipated effects on overhead shippers if it provides service over this 5.5-mile segment instead of KCS.

AMR's other waiver requests cite requirements that are not relevant to an adverse discontinuance application. As stated in the decision, in appropriate instances, the Board, or its predecessor agency, has waived inapplicable and unneeded portions of the abandonment regulations. See Chelsea Property Owners--Abandonment--Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY, Docket No. AB-167 (Sub-No. 1094) (ICC served July 19, 1989). Accordingly, the following requirements (except as they may apply to the overhead or bridge traffic discussed above) will be waived: (1) 49 CFR 1152.22(a)(5), which requires inclusion of the line on a system diagram map (SDM) in accordance with 49 CFR 1152.10 through 13; (2) 49 CFR 1152.22(c), which requires a description of the service performed on the line during the base year; (3) 49 CFR 1152.22(d), which requires revenue and cost data; (4) 49 CFR 1152.22(e)(1) and (2), which require identification of significant users and relevant communities; (5) 49 CFR 1152.22 (e)(3) and (4), which require statements of transportation alternatives and other public uses; (6) 49 CFR 1152.22(i), to the extent that the draft Federal Register notice requires information for which the Board grants AMR a waiver; and (7) the regulations concerning the financial assistance procedures at 49 CFR 1152.27.³

The filing of an SDM, which is imposed by statute, is not appropriate in the context of an adverse discontinuance. AMR cannot include the line on its map because the service at issue is not

³ In its reply to KCS' motion to dismiss, AMR withdraws its request for waiver of 49 CFR 1152.20(a)(2) to the extent that notice is required to be served on any labor organizations that represent KCS employees or significant users. AMR states that, if additional unions represent employees who would be affected by the discontinuance, KCS should so advise AMR. It appears that it is AMR's duty to request this information from KCS, rather than KCS' duty to come forward with this information on its own. AMR also seeks waiver of the regulations concerning public use procedures at 49 CFR 1152.28 and the regulations governing requests for interim trail use and rail banking at 49 CFR 1152.29. However, because this is a discontinuance proceeding and not an abandonment, public use and trail use/rail banking conditions are not applicable. In addition, AMR seeks waiver of the regulations requiring information regarding the impact on the environment at 49 CFR 1105.7 and on historic properties at 49 CFR 1105.8. However, this proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(6) and from historic reporting requirements under 49 CFR 1105.8(b)(3).

service that it provides. Nor is it appropriate to require KCS to include the line on its map as a candidate for discontinuance because it is not seeking the discontinuance. See Tri-County Metropolitan Transportation District of Oregon--Abandonment--A Line of Burlington Northern Railroad Company in Washington County, OR, Docket No. AB-6 (Sub-No. 348) (ICC served Mar. 4, 1993). Accordingly, waiver of the regulations involving the SDM is warranted.

A waiver will be granted as to the remaining information (except as it may apply to the bridge or overhead traffic).

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

It is ordered:

1. KCS' motion to dismiss is denied.
2. AMR's petition is granted to the extent described above.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary