

30033  
SEC

SERVICE DATE - FEBRUARY 23, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32896

KANSAS CITY TERMINAL RAILWAY COMPANY AND  
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY--  
CONTRACT TO OPERATE EXEMPTION--IN KANSAS CITY, MO

Decided: February 17, 1999

On April 5, 1996, Kansas City Terminal Railway Company (KCT) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe)<sup>1</sup> (petitioners) filed a joint petition pursuant to 49 U.S.C. 10502(a) for an exemption from the requirements of 49 U.S.C. 11323 to enter into a joint contract for Santa Fe to operate KCT's facilities for the benefit of the owners of KCT, including Kansas City Southern Railway Company (KCS).

On June 10, 1996, KCS filed a motion to hold the petition for exemption in abeyance pending resolution of a contract dispute between it and petitioners in the Circuit Court of Clay County, MO. On June 27, 1996, petitioners filed an unopposed motion for an extension of time in which to answer the motion filed by KCS. The extension of time request was granted by decision served July 10, 1996, and petitioners filed a timely response to the abeyance request on July 24, 1996. By decision served November 20, 1996, the proceeding was held in abeyance pending action by the court.

By letter filed January 16, 1998, KCS' representative submitted a status report indicating that the court had not yet acted on the contract dispute nor had the court set the case on its trial docket. However, the representative further indicated that, despite inaction by the court, the parties had been in constant communication regarding the dispute and had reached an agreement, in principle, that would resolve KCS' concerns.<sup>2</sup>

By motion filed February 8, 1999, petitioners request withdrawal of their joint petition for exemption. Petitioners state that the parties have now resolved and settled the issues between them, and that petitioners are no longer proposing to enter into a contract to operate. They further state that KCS' counsel has been contacted and that counsel has advised them that KCS does not oppose the motion. Petitioners' request is reasonable and will be granted.

---

<sup>1</sup> Since the petition was filed, Burlington Northern Railroad Company and Santa Fe merged to form The Burlington Northern and Santa Fe Railway Company.

<sup>2</sup> On November 5, 1998, KCS filed a dismissal without prejudice of the state court action against all named defendants (Case No. CV196-3967cc).

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

It is ordered:

1. Petitioners' motion to withdraw their joint petition for exemption is granted and the proceeding is discontinued.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary