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SEC

SERVICE DATE - JULY 16, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34509

KAW RIVER RAILROAD, INC.
– ACQUISITION AND OPERATION EXEMPTION –
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Decided: July 15, 2004

By notice of exemption filed on May 25, 2004, Kaw River Railroad, Inc. (KRR), a noncarrier, sought to acquire by lease, sublease, and assignment from The Kansas City Southern Railway Company (KCS) and to operate, respectively, 7.5 miles of trackage owned by KCS, 4.5 miles of trackage owned by Kansas City Terminal Railway Company (KCT) and currently leased and operated by KCS, and 6.2 miles of trackage owned by KCT over which KCS currently possesses operating authority.

On May 27, 2004, the Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET), filed a petition for a stay of the transaction encompassed by KRR's notice of exemption. The Board denied BLET's stay request in a decision served on May 28, 2004. The notice of exemption was served and published in the Federal Register on June 24, 2004 (69 FR 35424-25), along with a related notice of exemption in Watco Companies, Inc. – Continuance in Control Exemption – Kaw River Railroad, Inc., STB Finance Docket No. 34510 (STB served June 24, 2004) (69 FR 35423-24).

On June 4, 2004, and June 14, 2004, respectively, BLET and the United Transportation Union (UTU) filed petitions to revoke the exemption. Both BLET and UTU indicated in their filings that they intended to engage in discovery against KRR, and that they would supplement their petitions to revoke upon the completion of such discovery. On June 24, 2004, KRR filed a reply to BLET's and UTU's respective petitions to revoke.

BLET served on KRR a request for production of various documents on June 7, 2004. On June 10, 2004, in response to BLET's document production requests, KRR requested a protective order under 49 CFR 1104.14 with respect to documents produced in discovery in this proceeding. The Board issued the requested protective order in a decision served on June 18, 2004. Subsequently, on June 25, 2004, BLET filed a motion to compel discovery from KRR; in the alternative, BLET requested an extension of time to file its supplement to its petition to revoke. KRR responded to BLET's motion to compel on July 1, 2004.

On July 8, 2004, BLET requested an extension of time until August 2, 2004, for it and UTU to supplement their petitions to revoke. BLET also requests that the deadline for filing replies to the petitions to revoke, as supplemented, be adjusted to August 23, 2004. If its request is granted, BLET states that the extension will render unnecessary a Board ruling on BLET's motion to compel, and the Board should deem that request withdrawn. BLET also states that UTU and counsel for both KRR and KCS concur in the extension request.

BLET's request for an extension of time is reasonable and will be granted.

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

It is ordered:

1. The deadline for submission of supplemental petitions to revoke in this proceeding by BLET and UTU is extended until August 2, 2004.
2. The due date for replies to the supplemental petitions to revoke is extended, accordingly, to August 23, 2004.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary