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SERVICE DATE - NOVEMBER 13, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 14)<sup>1</sup>

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

Decided: November 12, 1998

By petition filed October 20, 1998, Arkansas & Missouri Railroad Company (AMR) seeks waiver from certain regulations requiring the filing of specific information in an adverse discontinuance application it intends to file at a future date. 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,<sup>2</sup> and file an application with the Board for the adverse discontinuance of the overhead trackage rights.

AMR submits that much of the required data is not available to it or is not applicable because AMR will continue to provide local rail service over the line. Thus, AMR seeks waiver of the following filing requirements: (1) 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 on significant users; (2) 49 CFR 1152.22(a)(5), which requires inclusion of the line on a system diagram map in accordance with 49 CFR 1152.10 through 13; (3) 49 CFR 1152.22(c), which requires a description of the service performed on the line during the base year; (4) 49 CFR 1152.22(d) which requires revenue and cost data; (5) 49 CFR 1152.22(e)(1) and (2), which require identification of significant users and relevant communities; (6) 49 CFR 1152.22(e)(3) and (4),<sup>3</sup> which require statements of transportation alternatives and other public uses; (7) 49 CFR 1152.22(f) to the extent it requires information regarding the impact on the environment set forth at 49 CFR 1105.7, and on historic properties set forth at 49 CFR 1105.8; (8) 49 CFR 1152.22(i) to the extent that the draft Federal

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<sup>1</sup> The waiver request was filed as STB Docket No. AB-103 (Sub-No. 14X). However, because it relates to the future filing of an adverse discontinuance application rather than a petition for exemption, the docket designation has been changed to STB Docket No. AB-103 (Sub-No. 14).

<sup>2</sup> 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.

<sup>3</sup> AMR's reference to 49 CFR 1152.20(e)(3) and (4) for these filing requirements apparently was inadvertent.

Register notice requires information for which the Board grants AMR a waiver; (9) the regulations concerning the financial assistance procedures at 49 CFR 1152.27; (10) the regulations concerning public use procedures at 49 CFR 1152.28; and (11) the regulations governing requests for interim trail use and rail banking at 49 CFR 1152.29. AMR also seeks waiver of all corresponding statutory requirements.

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.

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). Although, AMR correctly states that some of the cited requirements are not relevant to an adverse discontinuance application, it has not provided sufficient information to justify granting the requested waivers in their entirety. For example, although revenue and cost data, and other information regarding impact on local shippers and community interests may not be relevant to a decision on the merits because AMR will continue to provide local service, the potential impact on shippers and communities located elsewhere cannot adequately be addressed from the information provided by AMR. More information about AMR's future plans involving the overhead service now being provided by KCS is needed before the merits of the waiver petition can be assessed. Specifically, AMR should state whether or not it plans to replace KCS with another carrier if the adverse discontinuance is ultimately approved and otherwise address the potential impact that an interruption or diminution in rail service (or substitution of rail service, if any) would have on affected overhead shippers and communities. If AMR does not plan to replace KCS and overhead and bridge service will be lost or replaced by some sort of joint line service, then information about that service would appear to be germane to a decision on the merits. Under the circumstances, no action will be taken on the waiver petition until AMR submits additional information regarding the overhead service it seeks to have discontinued. AMR is invited to provide any other information that would assist the Board in assessing the relevance of regulatory requirements it seeks to have waived.

On November 5, 1998, AMR filed a copy of its notice of intent to file the adverse discontinuance application on or about November 25, 1998. AMR should be aware that, if the application is filed without the information that is the subject of the waiver requests and the waivers are not subsequently granted, it runs the risk of the application being rejected because the Board will ordinarily reject an abandonment or discontinuance application which does not substantially conform to the regulations in 49 CFR subpart C. 49 CFR 1152.24(e)(1).

It is ordered:

1. No action will be taken on the waiver request until AMR provides the additional

information discussed above.

2. Action on the motion to dismiss the waiver petition is held in abeyance.
3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary