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SERVICE DATE - FEBRUARY 13, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33311

KANSAS CITY SOUTHERN INDUSTRIES, INC., KCS TRANSPORTATION COMPANY, AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY--CONTROL-- GATEWAY WESTERN RAILWAY COMPANY AND GATEWAY EASTERN RAILWAY COMPANY.

AGENCY: Surface Transportation Board.

ACTION: Acceptance of application.

SUMMARY: The ICC Termination Act of 1996, Pub. L. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323-25. On January 14, 1997, Kansas City Southern Industries, Inc. (KCSI), KCS Transportation Company (KCSTC), The Kansas City Southern Railway Company (KCSR), Gateway Western Railway Company (GWWR), and Gateway Eastern Railway Company (GWER) filed an application for KCSI to acquire control of GWWR and GWER. We accept the application for consideration. We further find that this is a "minor transaction" under 49 CFR 1180.2(c). Finally, we establish an expedited procedural schedule.

DATES: Written comments, including comments from the Secretary of Transportation and the Attorney General of the United States, must be filed with the Board no later than March 17, 1997. Applicants' reply statement is due on April 1, 1997. The Board expects to issue a final decision by May 1, 1997, with an effective date of May 5, 1997.

ADDRESSES: Send pleadings referring to STB Finance Docket No. 33311 to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, D.C. 20423;¹ (2) Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, S.W. Washington, D.C. 20590; (3) Attorney General of the United States, Washington, D.C. 20530; (4) William C. Sippel, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601; and (5) William A. Mullins, 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Applicants seek approval under 49 U.S.C. 11323-25 for KCSI to acquire control of GWWR and GWER. On December 12, 1996, KCSI's wholly owned noncarrier subsidiary, KCSTC, acquired the stock of GWWR and GWER and placed the shares into an independent voting trust. Upon approval of this

¹ It is anticipated that the Board will move to its new offices in March 1997. The Board's address at the new offices will be: Surface Transportation Board, Mercury Building, 1925 K Street, N.W., Washington, DC 20423.

application, the voting trust will be dissolved, and the shares will be transferred to KCSTC. Applicants indicate that, after the transaction is effected, KCSI will control KCSR, GWWR, and GWER. GWWR and GWER will be marketed as part of the KCSR rail system, and their operations will be coordinated with those of KCSR. However, applicants indicate that GWWR and GWER will remain separate legal entities and will not be merged into KCSR.

Applicants allege that this is a "minor transaction" as defined in 49 CFR part 1180, the regulations that implemented former 49 U.S.C. 11343-45. The ICCTA revised those statutory provisions and reenacted them as 49 U.S.C. 11323-25. The transaction here specifically is subject to 49 U.S.C. 11324(d) because it does not involve the merger or control of two Class I railroads. Section 204(a) of the ICCTA provides that all ICC rules in effect on the date the enactment of the ICCTA "shall continue in effect according to their terms until modified, terminated, superceded, set aside, or revoked in accordance with law by the Board . . . or operation of law." While the standards and procedures of former sections 11343-45 and current sections 11323-25 are substantially similar insofar as minor transactions are concerned, the procedures of current section 11325(d), which applies if the transaction is a minor transaction, differ slightly from those at 49 CFR 1180.4 and shall govern. Otherwise, the use of the regulations at 49 CFR part 1180 for this proceeding appears proper.

Under 49 U.S.C. 11324(d), in proceedings not involving the merger or control of at least two Class I railroads, the Board must approve a transaction unless it finds that: (1) the transaction will result in a "substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States;" and (2) "the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs."

KCSR is a Class I railroad that operates more than 4,000 route miles in the Midwest and Southern States. GWWR is a Class II railroad which owns and operates 461 miles of rail line between Kansas City, KS, and East St. Louis, IL. GWWR also has haulage rights over the Southern Pacific Transportation Inc. line between Springfield and Chicago, IL. GWER, which is wholly owned by GWWR, is a Class III railroad that owns and operates 17 miles of rail line between East Alton and East St. Louis, IL. The transaction here will extend KCSR's rail system into Chicago and East St. Louis.

Applicants argue that the transaction will have no anticompetitive effects because it would be an end-to-end acquisition, not a parallel acquisition. According to applicants, the transaction will enhance competition and provide shippers with increased service and routing options.

Applicants assert that the transaction will further the public interest in meeting significant transportation needs. They contend that the combined KCSI system will provide shippers with better equipment utilization, improved car supply resulting from access to the larger car fleet of the combined system, new opportunities for single-line service, improved plant maintenance and other operating efficiencies. Applicants further assert that

the transaction will strengthen KCSI's combined system and improve its financial and operating performance.

Applicants anticipate that no existing non-exempt KCSR, GWWR or GWER employees will be adversely affected by the proposed transaction. According to applicants, all of GWWR's non-management employees and maintenance-of-way employees are represented by national unions and are covered under existing collective bargaining agreements, which will remain in force. They further state that there are no plans to transfer work currently performed by GWWR or GWER employees to KCSR locations. GWWR and GWER management employees and GWER exempt personnel are not covered by collective bargaining agreements. Applicants assert that the "applicable level of labor protection for the control transaction proposed herein is that set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979)."

Under 49 CFR part 1180, the Board must determine whether a proposed transaction is major, significant, or minor. We find that the transaction is minor under 49 CFR 1180.2(c), because it has no regional or national transportation significance. Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

Our finding that this transaction is minor under 49 CFR 1180.2(c) also satisfies the criteria for application of current 49 U.S.C. 11325(a)(3) and 11325(d).

By petition filed January 14, 1997, applicants request an expedited procedural schedule for processing the application. Due to the limited, end-to-end nature of the proposed transaction, it is not likely to involve complex issues. Thus, we will adopt the suggested expedited schedule, which is reflected in the "DATES" section above. But we reserve the right to modify this schedule if unforeseen issues arise.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Surface Transportation Board in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who timely files comments will be considered a party of record if the person so requests. No petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

- (a) the docket number and title of the proceeding;
- (b) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made;
- (c) the commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(d) a statement whether the commenting party intends to participate formally in the proceeding, or merely to comment on the proposal;

(e) if desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can be resolved only at a hearing; and

(f) a list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing this application are set forth at 49 U.S.C. 11325(d), but, as noted above, we have provisionally adopted an expedited schedule.

Discovery may begin immediately. We encourage the parties to resolve all discovery matters expeditiously and amicably.

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

It is ordered:

1. The application is accepted for consideration under 49 U.S.C. 11323-25 as a minor transaction under 49 CFR 1180.2(c).

2. The parties will comply with all provisions stated above.

3. This decision is effective on February 13, 1997.

Decided: February 7, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary