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SEC

SERVICE DATE - JANUARY 19, 1999

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 AND MISSOURI RAILROAD COMPANY

Decided: January 15, 1999

On November 30, 1998, Arkansas and Missouri Railroad Company (AMR) filed an application under 49 U.S.C. 10903 requesting that the Board find that the public convenience and necessity require and permit the discontinuance of trackage rights held by The Kansas City Southern Railroad Company (KCS) over an approximately 5.5-mile segment of rail line owned by AMR in Sebastian County, AR, and LeFlore County, OK. Notice of the application was served and published in the Federal Register (63 FR 70182) on December 18, 1998.

On January 8, 1999, AMR filed a motion to compel responses to 46 interrogatories and 26 document production requests that it served on KCS on December 18, 1998. According to AMR, when KCS served its responses and objections by facsimile on January 4, 1999, KCS assertedly objected to every discovery request and refused to provide any responsive information. Because AMR's rebuttal statement is due January 29, 1999, AMR requests that the Board order KCS to provide meaningful responses to the discovery requests by January 19, 1999. AMR also requests that, pursuant to 49 CFR 1114.31(d), the Board direct KCS to pay reasonable expenses caused by its failure to respond to the discovery requests.

AMR submits that the discovery requests seek documents relating to the operating agreement, interaction between KCS and AMR with respect to the subject line, and issues that AMR believes will be or should be raised in any protest or comment that KCS files in the proceeding.<sup>1</sup> Assertedly, the discovery requests involve KCS's: (1) maintenance practices and policies for the subject line and other KCS lines; (2) operations and marketing policies (including car supply and power utilization) in the Fort Smith area; (3) communications with shippers; and (4) physical facilities in the Fort Smith area.

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<sup>1</sup> The due date for filing comments or protests to the application was January 14, 1999.

In its reply filed January 13, 1999,<sup>2</sup> KCS submits that none of AMR's discovery requests were crafted to address the issues deemed relevant in adverse discontinuance proceedings, and instead, for the most part, are directed to the issue of contractual breach which is a matter for a state or federal district court to decide. KCS also argues that AMR's discovery is untimely because AMR's entire case for adverse discontinuance has already been filed with the application. Moreover, KCS submits that: (1) questions involving its past maintenance practices, policies, and expenditures, and its operations and marketing are not relevant to this proceeding; (2) any materials with respect to its communications with shippers that are relevant to the potential impact on shippers and communities will be provided in KCS's protest; and (3) information relating to KCS's physical facilities in the Fort Smith area, documents relating to the agreement, or documents concerning interaction between KCS and AMR with respect to the subject line is already in AMR's possession and was included in AMR's application materials. Thus, KCS concludes that the motion to compel and request for fees should be denied because AMR has failed to show how the information sought in its discovery requests is relevant and might affect the result of this adverse discontinuance proceeding or established that the information sought cannot be obtained elsewhere. KCS also requests that an Administrative Law Judge be appointed to oversee the remaining discovery process. However, because AMR's rebuttal statement is due January 29, 1999, KCS states that, by close of business on January 19, 1999, it is voluntarily committed to giving AMR all of the workpapers and supporting documentation that were used to prepare KCS's protest. Moreover, KCS states that, if upon reviewing KCS's protest, AMR will reformulate and narrow its discovery requests to issues raised in KCS's protest, KCS will commit to providing answers to those reformulated discovery requests within eight days.

The Board's stated policy is that contested discovery will be granted in abandonment proceedings only when the party seeking discovery shows that the information sought is relevant and might affect the result of the case, and that it ought to be obtained through discovery rather than some other means. See SWKR Operating Co.—Abandonment Exemption—In Cochise County, AZ, STB Docket No. AB-441 (Sub-No. 2X), slip op. at 2 (STB served Feb. 14, 1997). AMR's request does not meet those requirements and its motion to compel answers to its discovery requests and for fees will be denied.<sup>3</sup> Moreover, because KCS has offered to supply its workpapers to AMR by close of business on January 19, 1999, and has agreed to respond to relevant, reformulated

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<sup>2</sup> Because AMR's motion to compel required expedited handling, KCS was directed in a decision served January 11, 1999, to file any reply that it wanted to make to the motion no later than January 13, 1999.

<sup>3</sup> In addition, although parties are not generally required to file interrogatories or requests for documents with the Board, those materials, or portions thereof, must be appended to support a pleading such as a motion to compel. See 49 CFR 1114.22(f). Here, however, other than citing to a few specific questions, AMR has not furnished copies of the discovery requests for the Board's review.

discovery requests within eight days, it appears that AMR should be able to obtain any additional information it needs to file its rebuttal statement by the January 29, 1999 due date.<sup>4</sup>

It is ordered:

1. AMR's motion to compel responses to interrogatories and production of documents and its request for an order directing KCS to pay expenses and attorney fees are denied.
2. KCS's request that an Administrative Law Judge be appointed to oversee the remaining discovery process is denied.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

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<sup>4</sup> Under the circumstances, KCS's request that an Administrative Law Judge be appointed to oversee the discovery process is unnecessary and will be denied.