

STB FINANCE DOCKET NO. 32530

KANSAS CITY SOUTHERN RAILWAY COMPANY--
CONSTRUCTION AND OPERATION EXEMPTION--
GEISMAR INDUSTRIAL AREA NEAR GONZALES AND
SORRENTO, LA

Decided August 20, 1998

The Board holds this rail construction proceeding in abeyance in light of recent industry developments.

BY THE BOARD¹:

By decision served June 30, 1995 (June 1995 decision), the ICC conditionally exempted from the prior approval requirements of 49 U.S.C. 10901 the Kansas City Southern Railway Company's (KCS's) proposal to construct and operate approximately 9 miles of track beginning at milepost 814 and running in a northwesterly direction to the Geismar industrial area near Gonzales and Sorrento, in Ascension Parish, Louisiana. The June 1995 decision stated that, upon completion of the environmental review process, a further decision would be issued addressing the environmental impacts associated with the project and making the exemption effective at that time, if appropriate. The Section of Environmental Analysis (SEA) subsequently determined that the preparation of a full environmental impact statement (EIS) was warranted in this proceeding. On July 16, 1997, SEA issued, and requested public comment on,

¹ The *ICC Termination Act of 1995*, Pub. L. No. 104-88, 109 Stat. 803 (1995) (*ICCTA*), abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board) effective on January 1, 1996. Section 204(b)(1) of the *ICCTA* provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the *ICCTA*. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

a draft EIS (DEIS). Comments to the DEIS have been filed, and SEA is preparing a final EIS. In addition, the Illinois Central Railroad Company (IC) and the Concerned Citizens of Ascension Parish have filed petitions to reopen the proceeding and revoke the conditional construction exemption, which are pending.

We have decided to hold further proceedings in this construction case in abeyance at this time because of several other recent developments that directly affect this case. Specifically, on April 16, 1998, Canadian National Railway Company (CN), IC, and KCS (parties) announced that they have entered into a 15-year marketing alliance, effective immediately, that will offer shippers new competitive options involving north-south continental freight markets. Moreover, in conjunction with the marketing alliance, the parties have entered into a separate access agreement, contingent upon our approval of the CN-IC merger application submitted on July 15, 1998, that would allow both the merged CN-IC and KCS to extend their rail systems in the Gulf area. As particularly relevant here, the parties indicate that, in the fall of the year 2000, the agreement would allow KCS access to three chemical plants at Geismar, LA, now served by IC. Thus, it appears that the access agreement would allow KCS to provide the same service for which it has filed this construction exemption, using existing track. Finally, in STB Finance Docket No. 33556, Decision No. 6 (STB served August 14, 1998), we accepted for consideration the CN-IC merger application and issued a final 10-month procedural schedule for that case that provides for the issuance of a final written decision no later than May 11, 1999.

In these circumstances, it would be inappropriate to take any further action in this construction proceeding until we have issued our final written decision on the CN-IC merger. If the CN-IC merger is approved, the access agreement will give KCS an alternative way to serve the area and shippers for which it is seeking a construction exemption in this case. That alternative, by using existing track, would avoid the disruptive environmental consequences that would be involved with the physical construction of a new line here (which, as the DEIS shows, would have affects on wetlands, flood plains, and nearby residential areas).² There would also be no need for KCS to undertake the cost of constructing a new line. Perhaps most importantly, if the CN-IC merger is approved, KCS should be able to offer service to this area at approximately the same time, if not sooner, than it would be able to do if the construction

² We, like the ICC, are reluctant to authorize new lines where, as here, the parties can agree to joint use of one line. See, *Mobil Oil Corp. v. ICC*, 685 F.2d 624 (D.C. Cir. 1982).

proceeding were to proceed. As noted, the parties' access agreement would allow KCS access to the chemical plants at Geismar now served by IC in the fall of the year 2000. It is highly unlikely that any new line that we might authorize to be constructed could be built and operational by that time.

In short, it would be hard to justify either economically or environmentally undertaking this construction project when it has become apparent that service could be provided over existing track, assuming that the CN-IC merger is approved. Therefore, we will hold this construction proceeding in abeyance until the CN-IC merger has been decided. Should the CN-IC merger be denied, we will revisit the issue.

It is ordered:

1. This proceeding is held in abeyance until the issuance of a final written decision in the pending CN-IC merger.
2. This decision is effective on August 27, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.