

FINANCE-30400

(SUB NO. 18)

3410

SERVICE DATE

AUG 20 1984

EC
FR-7035-01

INTERSTATE COMMERCE COMMISSION

DECISION NO. 15

FINANCE DOCKET NO. 30400 (SUB-NO. 18)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND LOUISIANA & ARKANSAS
RAILWAY COMPANY - TRACKAGE RIGHTS, INDEPENDENT RATEMAKING
AUTHORITY, AND ASSET PURCHASES

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application of The Kansas City Southern Railway Company and Louisiana & Arkansas Railway Company (both KCS) for trackage rights over certain lines of Southern Pacific Transportation Company (SPT) and St. Louis Southwestern Railway Company (SSW), for establishment of an independent ratemaking authority pertaining to routes of SPT and Atchison, Topeka, and Santa Fe Railway Company (ATSF), and for purchase of certain assets. This application is filed as proposed conditions to the proposed merger between ATSF and SPT. A schedule has been set for consideration of this application.

DATES: Written comments must be filed with the Interstate Commerce Commission by October 1, 1984. Oral hearing in this consolidated proceeding will begin October 1, 1984.

FOR FURTHER INFORMATION CONTACT:

Ellen A. Goldstein
(202) 275-7969

ADDRESSES:

An original and 10 copies of all comments referring to Finance Docket NO. 30400 (Sub-No. 18) should be filed with:

Office of the Secretary
Interstate Commerce Commission
Washington, D.C. 20423

One copy of all comments should also be filed with:

Rail Section
Room 5417
Interstate Commerce Commission
Washington, DC 20423

SUPPLEMENTAL INFORMATION:

KCS currently operates primarily over a north-south route between Kansas City, MO, and the Gulf Ports of New Orleans, LA, and Beaumont/Port Arthur, TX, and an east-west route between New Orleans and Dallas, TX, via Baton Rouge and Shreveport, LA.

On July 19, 1984, KCS filed this responsive application as proposed conditions to the applications in Finance Docket No. 30400 and embraced cases, where the Santa Fe Southern Pacific Corporation (SFSP) seeks authority to acquire control of SPT, to merge SPT and ATSF to form SPSF, and for related transactions. Notice of those applications was published in the Federal Register on April 20, 1984, at 49 Fed. Reg. 16881.

By statute and regulation, responsive applications were due to be filed July 19, 1984. [49 U.S.C. 11345 (b)(2); and 49 C.F.R. 1180.4 (d)(4).] We granted KCS an extension of time to complete its application by September 10, 1984 (decision served July 23, 1984). Supporting financial information, environmental and energy data, market impact analysis, operating plan, density charts, and verified statements must be filed by that date.

A summary of the proposals follows:

(1) KCS seeks authority to quote, make, and publish, for its own account, rates for rail transportation services, and to enter with shippers into contracts for the provision of rail transportation services, over routes of the proposed Southern Pacific and Santa Fe Railway Company (SPSF), specifically, (a) the existing ATSF and SPT routes between San Francisco/Oakland, CA area points and Los Angeles/Long Beach, CA area points, via Fresno and Bakersfield, CA, and (b) the existing SPT route between Los Angeles/Long Beach, CA area points and Houston/Galveston, TX. This authority would also apply to connections with short line railroads at points other than those commonly served by ATSF and SPT in cases where the short line has competitive connections with ATSF and SPT. KCS would have access to all shippers served by SPSF at any of the commonly served points.

(2) In conjunction with the independent ratemaking authority, KCS also seeks trackage rights over the SPT line from Avondale, LA, to West Lake, LA, as follows:

From the point of beginning of SPT ownership at or near West Bridge Junction (shown as approximately SP M.P. 10.5 in its Division Time Table for its Lafayette Division) to the point of SPT's connection with KCS at Lockmoor (shown as approximately SP M.P. 222.8 in that Division Time Table).

(3) In conjunction with the independent ratemaking authority, KCS seeks trackage rights over the SPT line from Beaumont, TX to Houston, TX, with rights of local access at Houston, as follows:

From the point of KCS' connection with SPT at Beaumont (shown as approximately SP M.P. 280.2 in its Division Time Table for its Lafayette Division) to the point of SPT's connection with the track of Houston Belt and Terminal Railway Company ("HB&T") at Houston, near Tower 87 (Tower 87 is shown as approximately SP M.P. 356.8 in its Division Time Table for its Lafayette Division).

(4) In conjunction with the independent ratemaking authority, KCS seeks trackage rights over the SPT line from Houston, TX to Galveston, TX, with rights of local access at Galveston, and the right to purchase the SP line from Texas City, TX to Galveston, TX, which the Primary Applicants propose to abandon, permitting operation as follows:

By trackage rights from the point of SPT's connection with the tracks of HB&T at Houston, near Tower 86 (Tower 86 is shown as approximately SP M.P. 3.6 in its Division Time Table for its Houston Division) to Texas City Junction (shown in said Division Time Table as approximately SP M.P. 46.8). Primary Applicants state their intent, at page 45 of their Operating Plan (Exhibit 13 to their Application), to abandon 8 miles of SPT track between Texas City and Galveston. KCS proposes, as a condition to the merger, that it be allowed to purchase such track designated for abandonment. KCS proposes to operate over such purchased track (Texas City Junction is shown as approximately SP M.P. 46.8 in its Division Time Table for its Houston Division and 8 miles from that point would be approximately SP M.P. 54.8). KCS also seeks the right to operate via trackage rights from the points where its purchased track would end into Galveston (i.e., from approximately SPT's said M.P. 54.8 to approximately SPT's station called "Galveston" shown in its Division Time Table for its Houston Division as SP M.P. 55.6), including the right to use SPT's "Galvez Yard" at Galveston.

(5) In conjunction with the independent ratemaking authority, and in order to acquire operating rights over HB&T, KCS seeks the right to purchase 50 percent of ATSF's existing interest in HB&T, but not including any aspect of that interest attributable to non-operating real property of HB&T or to operating properties used exclusively for passenger service.

(6) KCS seeks trackage rights over the SPT line between Greenville, TX and Fort Worth, TX, with rights of local access at Fort Worth, and the right to purchase Hodge Yard in Fort Worth, which the Primary Applicants propose to remove from active service, permitting operation as follows:

From the point of KCS' connection with SPT at Greenville (shown as approximately SP M.P. 551.3 in its Division Time Table for its Pine Bluff Division) to and into SPT's yard at Fort Worth (shown in that Division Time Table as approximately SP M.P. 630.2).

The application substantially complies with the applicable regulations, waivers, and extensions granted. The applications and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained from applicant's representatives upon request. Interested persons should request copies of exhibits due September 10th, from applicant's representatives, so their comments may reflect the later filed information.

The application is consolidated for disposition with the applications in Finance Docket No. 30400, et al. Those applications are the subject of oral hearings conducted by Administrative Law Judge James E. Hopkins, commencing October 1, 1984. By statute, the evidentiary phase of these proceedings must end by April 20, 1986. Service of an initial decision will be waived, and determination of the merits of the applications will be made in the first instance by the entire Commission. 49 U.S.C. 11345.

Participation in the Proceeding: Comments. Interested persons may participate formally by submitting written comments regarding the applications. Comments should indicate the exact proceeding designation, and an original and 10 copies should be filed with the Office of the Secretary, Interstate Commerce Commission, Washington, DC, 20423, no later than October 1, 1984. One copy should also be sent to the Rail Section, Room 5411, Interstate Commerce Commission, Washington, DC, 20423. Comments shall include the following: the person's position in support of or in protest to the proposed transaction, and specific reasons why approval would or would not be in the public interest. See 49 C.F.R. 1180.4(d)(1). Interested persons who do not intend to participate formally in the proceeding but who desire to comment may file statements, subject to the filing and service requirements specified below. Persons must state specifically whether they intend to actively participate in the oral hearings on the applications or whether they wish only to be advised of all decisions issued by the Commission in this proceeding. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Written comments shall be concurrently served by first-class mail on the Secretary of the Department of Transportation, on the Attorney General of the United States, and on

(1) Applicant's representatives:

Robert K. Zimmerman
114 West 11th Street
Kansas City, MO 64105

Joseph Auerbach
Sullivan & Worcester
One Post Office Square
Boston, MA 02109

and

David M. Schwartz
Sullivan & Worcester
1025 Connecticut Ave. N.W.
Washington, DC 20036

and (2) representatives of primary applicants SPT and ATSF:

R.K. Knowlton
Vice - President - Law
Santa Fe Southern Pacific Corp.
224 S. Michigan Ave.
Chicago, IL 60604

Milton E. Nelson, Jr.
General Counsel
The Atchison, Topeka and Santa Fe Railway Co.
224 S. Michigan Ave.
Chicago, IL 60604

and

Douglas S. Stephenson
General Attorney
Southern Pacific Transportation Co.
One Market Plaza
San Francisco, CA 94105

Within 10 days of the filing of written comments with the Commission, comments must also be served, by first class mail, on all persons designated active parties of record on the Commission's revised service list, which will be served shortly.

Responsive Applications. Because the application contains proposed conditions to approval of the applications in Finance Docket No. 30400, et al., the Commission will entertain no requests for affirmative relief to these proposals. Parties may only participate in direct support of or direct opposition to KCS's application as filed.

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

It is ordered:

1. The application in Finance Docket No. 30,400 (Sub-No. 18) is accepted for consideration, subject to the condition that it is completed by the date previously set.
2. The parties shall comply with all provisions as stated above.
3. The decision is effective on the date served.

Decided: August 15, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

Kathleen M. King
Acting Secretary

(SEAL)