

FINANCE-30400

(SUB NO. 20)

3392

SERVICE DATE

AUG 20 1984

EC
FR-7035-01

INTERSTATE COMMERCE COMMISSION

DECISION NO. 17

Finance Docket No. 30400 (Sub-No. 20)

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY-TRackage RIGHTS
AND ACQUISITION-OVER SOUTHERN PACIFIC TRANSPORTATION COMPANY

AGENCY: Interstate Commerce Commission

ACTION: Application accepted for consideration

SUMMARY: The Commission is accepting for consideration the application of the Denver and Rio Grande Western Railroad Company (DRGW) for trackage rights over and acquisition of (or in the alternative trackage rights over) certain lines of the Southern Pacific Transportation Company (SPT) in California, Nevada, Oregon, and Utah. This application is filed as a proposed condition to the proposed merger between the SPT and the Atchison, Topeka and Santa Fe Railway Company (ATSF). 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. 20) should be filed with:

Office of the Secretary
Interstate Commerce Commission
Washington, DC 20423

One copy of all comments should also be filed with:

Rail Section
Room 5417
Interstate Commerce Commission
Washington, DC 20423

SUPPLEMENTAL INFORMATION:

DRGW currently operates over 1,800 miles of track from Denver and Pueblo, CO to Salt Lake City and Ogden, UT, and has trackage rights between Pueblo and Kansas City, MO.

On July 19, 1984, DRGW filed this responsive application as proposed conditions to the application in Finance Docket No. 30400 and embraced cases. In those proceedings the Santa Fe Southern Pacific Corporation (SFSP) is seeking authority to control SPT, for the merger of ATSF and SPT, and related transactions. Notice of those applications was published in the Federal Register on April 20, 1984, at 49 Fed. Reg. 16881. The trackage rights and acquisitions sought by DRGW in Finance Docket No. 30400 (Sub-No. 20) involve a portion of the SPT lines sought to be controlled and merged by SFSP.

By statute and regulation, responsive applications were due to be filed July 13, 1984 [49 U.S.C. 11345 (b)(2); and 49 C.F.R. 1180.4 (d)(4)]. We granted DRGW 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, labor impact, and verified statements must be filed by that date.

A summary of the proposed conditions follows:

(1) DRGW seeks fee ownership^{1/} of the following SPT lines: Ogden, UT-Winnemucca, NV; Winnemucca, NV-Klamath Falls, OR;^{2/} Winnemucca, NV-Roseville, CA; Wendel-Susanville, CA; Alturas, CA-Lakeview, OR; Hazen-Fallon, NV; and Hazen-Mina, NV.

(2) DRGW seeks unrestricted trackage rights over (or an alternate means of serving) the following SPT lines: Klamath Falls-Portland, OR; Roseville-Sacramento-Oakland, CA via Davis and Fairfield, CA (to provide a continuous through route between Oakland and Roseville via Davis); Roseville-Fresno, CA, via Galt, Lathrop and Modesto, CA; Oakland-Niles, CA, via Hayward, CA; Lathrop-Tracy, CA; Niles-San Jose, CA (including Lick, Luther Branch and Maybury Branch and other areas in the City of San Jose); Davis-Woodland, CA; Benicia Branch, CA; Fairfield-Schellville, CA; Stockton-Oakdale, CA (or, in the alternative, trackage rights over ATSF between Oakdale and Stockton); San Jose-Santa Clara, CA (including a portion of Santa Clara-Agnew line)-Sunnyvale, CA; Elmurst-Mulford, CA; Martinez-Pittsburg, CA (including a portion of Concord-Avon line); Albany-Lebanon-Griggs, OR; Albany-Corvallis-Dallas, OR; Portland-Beaverton, OR; Eugene-Ashland-Belleville, OR (including White City Branch); Eugene-Danebo-Coquille, OR; and Springfield-Hendricks, OR^{3/}.

The application substantially complies with the applicable regulations, waivers and extensions granted. By September 10th, DRGW must file milepost designations for the lines at issue here. 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 applicants representatives, so their comments may reflect the later filed information.

1/ In the alternative, DRGW seeks trackage rights over these lines.

2/ This line includes trackage rights over a 149-mile Western Pacific line between Winnemucca, NV, and Flanigan, NV. DRGW seeks an assignment of trackage rights over this Western Pacific line.

3/ DRGW understands that certain SPT lines referenced in this paragraph -- lines that SPT obtained through its acquisition of and subsequent merger with the Central Pacific Railway Company -- are subject to a paired-track agreement between SPT and UP. To the extent that such agreement may interfere with the award of the conditions sought by DRGW, DRGW asks the Commission to set the agreement aside pursuant to 49 U.S.C. 11351 and 49 C.F.R. 1180.1(g).

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 Proceedings: 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 5417, 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 application 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:

E. Barrett Prettyman, Jr.
Hogan & Hartson
815 Connecticut Ave., N.W.
Washington, DC. 20006

and

Samuel R. Freeman
Vice President & General Counsel
Denver and Rio Grande Western Railway Company
P.O. Box 5482
Denver, CO 80217

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, to be issued shortly by the Commission.

Responsive Applications. Because this 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 DRGW's applications 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. 30400 (Sub-No. 20) 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.

(SEAL)

Kathleen M. King
Acting Secretary