

FD-30400

INTERSTATE COMMERCE COMMISSION

SERVICE DATE

Finance Docket No. 30400

JUN 28 1984

SANTA FE SOUTHERN PACIFIC CORPORATION - CONTROL
- SOUTHERN PACIFIC TRANSPORTATION COMPANY

DECISION NO. 9

Decided: June 22, 1984

By petition filed May 4, 1984, Vince Aloise, Secretary Treasurer of Teamsters Local No. 315, an unincorporated labor association, on his own behalf and on behalf of members of Teamsters Local No. 315, requests (1) that the Commission assert jurisdiction over the sale of the Santa Fe Trail Transportation Company (SFTT), to Rail Services, Inc. (RSI); (2) that a cease and desist order be entered to prevent the sale of SFTT, or any similar transaction, pending approval of the control applications in this proceeding; and (3) that labor protective conditions be imposed on the sale of SFTT for SFTT employees. The Santa Fe Southern Pacific Corporation filed a statement in response to the petition to which petitioner replied.

SFTT is a subsidiary of the Atchison, Topeka and Santa Fe Railway Company (ATSF), which is a subsidiary of Santa Fe Industries, Inc. (SFI). Pursuant to a Combination Agreement, SFI became a subsidiary of a new holding company, Santa Fe Southern Pacific Corporation (SFSP). Matters concerning common control of various regulated carriers and the merger of ATSF with Southern Pacific Transportation Company are currently pending before the Commission.

Control of SFTT by ATSF was approved by the Commission in Atchison, T. & S. F. Ry. Co. - Control - Santa Fe Trail Trans., 15 M.C.C. 469 (1938). In Finance Docket No. 25906, AT&SF, Inc. - Merger - Atchison, Inc. and Atchison, Topeka and Santa Fe Railway Co. (not printed), served January 23, 1970, SFI was authorized to assume control over ATSF. On November 27, 1970, SFI acquired direct control of SFTT.

SFTT holds motor common carrier authority to transport general commodities with exceptions between points in the United States (except Alaska and Hawaii) and to serve ATSF as a contract carrier. It also provides limited intermodal service.^{1/} SFI has agreed to sell SFTT to RSI.

RSI is an Illinois corporation that acts as a shippers' agent engaged in the consolidation of boxcar shipments and provides certain exempt carrier operations, primarily TOPC movements of agricultural commodities. RSI holds no authority of any type from this Commission, and is not a carrier subject to 49 U.S.C. Subtitle IV. RSI will purchase all outstanding stock in SFTT.

SFSP argues that the Commission has no jurisdiction over the involved sale and therefore cannot impose labor protective conditions because the sale of stock is from one non-carrier, SFI, a holding company, to another non-carrier, RSI. SFSP points out that SFTT will be sold as an ongoing concern with no change in operations or authorities. In support of its position, SFSP cites Ontario Freight Lines Corp. - Lease - Onandaga Freight Corp., 39 M.C.C. 607 (1943); E & W Transp. Co. - Purchase - Burch, 45 M.C.C. 182 (1946); Canal Randolph Corp. Control, 312 I.C.C. 513 (1961); Delaware & Hudson Co. Merger, 317 I.C.C. 177 (1962); and Iowa Term. R. R. Acquisition and Operation, 312 I.C.C. 546, 548 (1961).

^{1/} SFSP states that the description of operations in the Internal Revenue Service National Office Technical Advice Memorandum, dated September 1, 1973, and attached as appendix 1 to the petition, is outdated and that most piggyback related services are now performed by Santa Fe Terminal Services, Inc., a separate subsidiary of ATSF.

DISCUSSION

Commission jurisdiction over the acquisition of a carrier is set forth at 49 U.S.C. 11343(a) and is limited to "...transactions involving carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission." It should be noted that the Interstate Commerce Act (Act) specifically refers to transactions involving more than one regulated carrier. The purpose of requiring prior Commission review is directed toward alterations in inter-carrier relationships that may affect the public interest and competition. The basic types of transactions contemplated include: (1) consolidation or merger of two carriers into one; (2) acquisition of control, purchase, lease or contract to operate a carrier by other carrier(s); and (3) acquisition of trackage rights or joint ownership or use of rail facilities of one carrier by another carrier.

The purchaser of SFTT, RSI, is not a carrier subject to our jurisdiction under the Act. Therefore, the sale is not subject to prior review by this Commission. The Commission regularly dismisses voluntarily filed applications for approval of the acquisition of stock if the purchasing party is a non-carrier under the Act. See e.g. No. MC-F-15107, Sauk Valley Leasing, Inc. - Purchase Exemption - Johnson Truck Line, Inc. (not printed, served February 17, 1983).² While RSI states that it has engaged in certain statutorily exempt operations as a carrier, such exempt carrier operations do not bring its purchase of SFTT under our jurisdiction. The Act only contemplates "carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission." Any ambiguity of section 11343 concerning whether a non-regulated carrier might fall within the purview of our jurisdiction is clarified by reference to the prior codification of the Act. See former section 5(2) of the Act, recodified at 49 U.S.C. 11343 and former section 5(13) for the scope of the Commission's jurisdiction and the applicable definition of "carrier," respectively. The recodification of the Act did not contemplate any substantive change to the statute. Pub. L. No. 95-473, 92 Stat. 1337 (1978).

Accordingly, the Commission is without jurisdiction to review the proposed transaction and cannot require the filing of an application to approve such a sale. Florida East Coast Ry. Co. Reorganization, 267 I.C.C. 297, 309 (1947). Because the Commission has no jurisdiction over the subject sale, the request for a cease and desist order will be denied.

Railroad labor protective conditions are limited to railroad employees and do not apply to motor carriers or other non-rail entities including directly held subsidiaries. See Walters v. Roadway Express, Inc., 557 F.2d 521 (5th Cir. 1977) and Finance Docket No. 25583 (Sub-N6. 1), Burlington Northern, Inc.-Control and Merger-St. Louis-San Francisco Railway Company (not printed), served November 29, 1983, and the cases cited there.

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

It is ordered:

1. The petition is denied.
2. This decision is effective on the date served.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne
Secretary

(SEAL)

² These decisions are routinely issued by the Director, Office of Proceedings.

JUN 28 1984

INTERSTATE COMMERCE COMMISSION

DECISION NO. 11

Finance Docket No. 30400

SANTA FE SOUTHERN PACIFIC CORPORATION - CONTROL
- SOUTHERN PACIFIC TRANSPORTATION COMPANY

Decided: June 22, 1984

PETITIONS FOR EXTENSION OF TIME

The primary application in this proceeding was accepted for consideration by Decision No. 7, served April 20, 1984. By statute and regulation [49 U.S.C. 11345(b)(2) and 49 CFR 1180.4(d)(4)(i)], responsive applications must be filed 90 days after acceptance of the primary application, i.e., by July 19, 1984. While the deadline cannot be extended, we may allow an incomplete application to be filed, with an extension of time to complete it, 49 CFR 1180.4(d)(4)(iii). Several parties seek such extensions.

Union Pacific Railroad Company and Missouri Pacific Railroad Company (collectively, UP/MP) request a 30-day extension to complete responsive applications for trackage rights and ancillary rights. Specifically, the additional time is sought to compile a labor impact analysis [49 CFR 1180.6(a)(2)(v)], environmental and energy data [49 CFR 1180.6(a)(8) and (9)], market impact analyses (49 CFR 1180.7), operational data (49 CFR 1180.8), financial information (49 CFR 1180.9), and related verified statements.

UP/MP argue that the the large volume of complex information and data that must be reviewed and compiled to support their applications requires substantial time. UP/MP state that they will not have had access to the ATSF document depository until May 24th, and will not have access to the SPT depository until a later date.

The Denver and Rio Grande Western Railroad Company (DRGW) responded to UP/MP's petition. DRGW, which supports the UP/MP request on the condition that DRGW be granted the same relief, states that it faces the same problems and uncertainties of meeting the July 19th filing date, and argues that it would be unfair to require it to disclose the full details of its responsive application to its competitor UP/MP before UP/MP has completed its own filing.

The Missouri-Kansas-Texas Railroad Company (MKT) also requests leave to file incomplete applications. MKT states that it needs 90 days from its receipt of the necessary traffic data pursuant to discovery to complete its application. MKT seeks leave to supplement its employee impact, environmental and energy, competitive, essential service, operational, and financial data. As of June 4th, the traffic data sought by MKT

on April 23rd, and upon which much of its proposed applications will be based, had not been provided by applicants, and other documents were still being sought.

The Kansas City Southern Railway Company (KCS) seeks a 45-day extension to complete its responsive application, including a market impact analysis, an operating plan, financial information, and verified statements. In support, KCS states that, although it began informal discovery even before the primary application was accepted for consideration, the requested data were not available until May 21st. Copies of the requested documents were not ready as of June 4th. The use by applicants of a computer based study for their market impact analysis has complicated KCS's task, as has the need both to study its losses based on 1982 traffic and to analyze the impact of its proposed conditions on 1983 traffic.

In reply to UP/MP's petition, applicants argue that UP/MP do not allege sufficient grounds to support an extension of time; specifically, applicants state that UP/MP has a large staff, applicants have cooperated in the discovery effort, and UP/MP was tardy in its discovery effort. In reply to DRGW's response, applicants argue that no reason was given for extending the filing date.

In light of the complex nature of the proceeding, our recognition of the task before protestants, and their persuasive arguments that they have been working diligently at assembling the necessary information, we will grant UP/MP, DRGW, MKT, and KCS an extension from July 19th to complete their responsive applications; outstanding exhibits must be filed by August 20, 1984.

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

It is ordered:

1. The petitions of UP/MP, MKT, DRGW, and KCS for extension of time to complete responsive applications are granted to August 20, 1984, as stated above. However, the initial responsive filings remain due on July 19, 1984.

2. This decision shall be effective on the date served.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

(SEAL)

James H. Bayne
Secretary