

Voting Conference, May 3, 2005

Statement of Marc Lerner
Branch Chief, STB Office of Proceedings

Kaw River Railroad, Inc.
– Acquisition and Operation Exemption –
The Kansas City Southern Railway Company

STB Finance Docket No. 34509

Good morning Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Kaw River Railroad filed a notice of exemption to lease and operate 18.2 miles of track from The Kansas City Southern Railway Company in Kansas City, KS, and Kansas City, MO. The Brotherhood of Locomotive Engineers and Trainmen and the United Transportation Union oppose the transaction.

The unions argue that this transaction is a sham, claiming that Kaw River was created for the purpose of evading labor agreements, and that Kaw River will function as the alter ego of KCS. They also argue that the trackage involved here is yard or switching track excepted from Board licensing requirements under 49 U.S.C. 10906, and that the Board should therefore reject Kaw River's notice. Kaw River and KCS respond that there is no basis for rejecting Kaw River's notice or revoking its exemption.

The draft decision before you would deny BLET's and UTU's petitions to reject Kaw River's notice or to revoke its exemption. The draft decision would find that the transaction is not a sham because it serves a valid commercial purpose, that Kaw River is

not KCS's alter ego because it has real opportunities and responsibilities under the lease agreements, and that, as a new common carrier, Kaw River was required to obtain, and has properly obtained, Board approval to undertake this transaction.

We would be happy to address any questions you might have.