

SERVICE DATE - DECEMBER 12, 1996

SURFACE TRANSPORTATION BOARD^{1/}

DECISION

STB Finance Docket No. 33311

KANSAS CITY SOUTHERN INDUSTRIES, INC. AND
THE KANSAS CITY SOUTHERN RAILWAY COMPANY--CONTROL--
GATEWAY WESTERN RAILWAY COMPANY AND
GATEWAY EASTERN RAILWAY COMPANY

WAIVER

Decided: December 10, 1996

By petition filed December 2, 1996, Kansas City Southern Industries, Inc. (KCSI), The Kansas City Southern Railway Company (KCSR), Gateway Western Railway Company (GWR), and Gateway Eastern Railway Company (GWER) (collectively applicants) seek a waiver under 49 CFR 1180.4(f) of one of the filing requirements for a minor application they intend to file under 49 U.S.C. 11323-25 seeking approval for KCSI to acquire control of GWR and GWER.^{2/} The parties intend to file their application before December 31, 1996.

As applicants indicate, 49 CFR 1180.3(b), defines an "applicant carrier" to include "all carriers related to the applicant, and all other carriers involved in the transaction." Applicants state that KCSR, GWR, and GWER will be considered applicant carriers in this proceeding. They add that KCSI also owns three motor carrier subsidiaries: Kansas City Southern Transport Co., Inc.; Landa Motor Lines; and Louisiana, Arkansas & Texas Transportation Company. Applicants state that KCSI's motor carrier subsidiaries are no longer operating and have no employees, and that their assets have been sold to other motor carriers. According to applicants, these companies now exist only as legal corporate entities and would have been dissolved but for pending litigation involving these companies. For these

^{1/} The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This decision relates to railroad acquisitions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323-25.

^{2/} This transaction will be subject to the standards of 49 U.S.C. 11324(d), because it does not involve the merger or control of two Class I railroads. Section 204(a) of the ICCTA provides that all ICC rules in effect on the date of the enactment of the ICCTA "shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board . . . or operation of law." While the standards and procedures of former sections 11343-45 and current sections 11323-25 are substantially similar insofar as minor transactions are concerned, the procedures of current section 11325(d) differ slightly from those at 49 CFR 1180.4. The use of the regulations at 49 CFR part 1180 is proper for deciding applicants' waiver request.

reasons, they seek Board confirmation that these non-operating motor carrier subsidiaries need not be included as applicant carriers in this proceeding.

The applicants' request is reasonable and the petition for waiver will be granted. It is similar to others granted in the past for operating motor carrier subsidiaries.^{3/}

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

It is ordered:

1. Applicants' petition for waiver is granted.
2. This decision is effective on the date served.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams

Secretary

^{3/} See Union Pacific Corporation, et al.--Control & Merger--Southern Pacific Rail Corporation et al., Finance Docket No. 32760 (ICC served Sept. 5, 1995); Burlington Northern, Inc. & Burlington Northern Railroad Company--Control & Merger--Santa Fe Pacific Corporation and The Atchison, Topeka & Santa Fe Railway Company, Finance Docket No. 32549 (ICC served Oct. 3, 1994); and Union Pacific Corporation et al.--Control--Chicago North Western Holdings Corp. et al., Finance Docket No. 32133 (ICC served Oct. 26, 1992).