

FD 30400

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

Decided: April 4, 1985

On March 12, 1985, the Missouri-Kansas-Texas Railroad Company ("MKT") filed a "Petition For Clarification As To Scope of Issues." Specifically, the MKT addresses the testimony of Dr. William J. Baumol, filed February 21, 1985, on behalf of the Santa Fe Southern Pacific Corporation ("SFSP") concerning trackage rights compensation. MKT requests "a ruling that the testimony of Dr. Baumol addressing the economic principles that should govern the pricing of trackage rights is irrelevant to the issues to be decided at this stage of the case, and that neither cross-examination of that testimony nor rebuttal evidence addressed to the issue of trackage rights valuation is appropriate at this time." Petition For Clarification at 5. MKT argues that in the past the Commission has decided the issue of trackage rights compensation only after issuing a decision which conditions its approval of a merger on the grant of trackage rights to competitors. MKT cites Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 459 (1982).

SFSP opposes the MKT's petition. Having considered the petitions and arguments of the parties, we will deny the petition.

It is clear from MKT's request for relief that its "Petition For Clarification" is in effect a motion to strike. Yet MKT has not offered any support for its assertion that the testimony should be dismissed as irrelevant. Indeed, the Commission's rules require merger applicants to file "[a]ny other supporting or descriptive statements applicants deem material." 49 C.F.R. 1180.6(j) (1984). On the basis of this rule alone the MKT petition must be denied.

Other than MKT's assertion that the Baumol testimony is irrelevant, the motion to strike rests on the argument that the testimony is premature. This argument does not fare any better under our rules. Moreover, contrary to MKT's assertion, the Union Pacific decision did not prohibit the kind of testimony submitted by Dr. Baumol in this proceeding. In fact, that decision specifically discusses the parties' testimony on the principles governing trackage rights compensation. See 366 I.C.C. at 589-90.

Finally, even if our rules were not so broad as to specifically permit its submission, the testimony could not reasonably be excluded. If the Commission should ultimately decide to approve the proposed merger, but condition its approval upon SFSP granting trackage rights to its competitors, it will be necessary for us to set forth a statement of the general principles upon which trackage rights compensation

should be determined. Such a statement would be necessary to enable SFSP to evaluate the costs of deciding to consummate the proposed merger. It simply would not be fair to require SFSP to make that decision without the ability to assess its consequences.

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

It is ordered:

1. MKT's Petition For Clarification is denied.
2. This decision is effective on the date served.

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

(SEAL)

James H. Bayne
Secretary