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October 18, 2004

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

OCT 18 2004

Part of
Public Record

RE: *Kaw River Railroad, Inc.—Acquisition And Operation Exemption--
The Kansas City Southern Railway Company
Finance Docket No. 34509*

Dear Secretary Williams:

The Kansas City Southern Railway Company ("KCS") opposes the request of the Brotherhood of Locomotive Engineers & Trainmen ("BLET") that the Board schedule oral argument in this matter. There are already over 20 filings in this docket. In this informal proceeding, *see* 49 C.F.R. §1121.4(a) ("Exemption proceedings are informal"), discovery has been conducted and a multitude of pleadings has been filed. KCS submits that the record is complete and fully sufficient for the Board to reach an informed decision.

BLET's petition seeks to characterize this transaction as unique and of industry-wide importance, but it is not. Merely labeling something as a "first" or as a "major" this or that does not make it unique or unusually important. Instead, this proceeding involves a relatively common type of lease to a small, new carrier. Indeed, BLET's argument that the Board has developed a line of precedents on this subject through case-by-case adjudication belies the contention that this transaction is unique or worthy of the unusual step of ordering oral argument.

None of the Board's rules provide for oral argument in an informal proceeding such as this. Oral argument is normally reserved for cases such as coal rate proceedings or major rail mergers where there is a massive record and the parties can use the argument to summarize the important points of the record. By contrast, this case is like most that come before the Board, presenting a limited set of facts which has been adequately explored on a manageable record. *See, e.g., CSX Transportation, Inc.—Abandonment Exemption—In Summit, County, OH*, STB Docket No. AB-55 (Sub-No. 631X) (served May 12, 2004), and *Brotherhood of Locomotive*

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Engineers v. Union Pacific Railroad Company and Iowa Interstate Railroad, Finance Docket No. 23294 (served Nov. 6, 1995) (each denying requests for oral argument as unnecessary).

The Board's preference for case-by-case adjudication on this subject provides for reasoned decisionmaking on the specific facts of each case. Oral argument and grand pronouncements will not aid in that decisionmaking. KCS submits that oral argument is unnecessary for this non-extraordinary transaction.

Finally, the United Transportation Union ("UTU") filed a one-paragraph comment on October 13 supporting BLET's oral argument request.¹ KCS respectfully submits that UTU's suggestion that "[o]ral argument could resolve some of the disputes between the parties regarding the operations issues," is not an appropriate use of oral argument.

Please acknowledge receipt of this filing by date stamping the eleventh copy of the filing and returning it to the individual making this filing to return to me. A copy of this filing has been served today on all parties of record by hand delivery or other expedited delivery.

Sincerely yours,



William A. Mullins

cc: All parties of record

¹ As reflected on UTU's certificate of service, UTU served its letter on the other parties to the case, but not on KCS.