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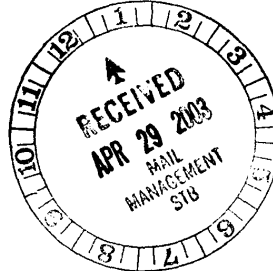
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April 29, 2003

**VIA HAND DELIVERY**

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



Re: *Kansas City Southern---Control--The Kansas City Southern Railway Company, Gateway Eastern Railway Company, And The Texas Mexican Railway Company*  
Finance Docket No. 34342

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket, please find an original and eleven copies of The Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company and The Texas Mexican Railway Company's "Amendment to the Petition for Protective Order." The document is also included on the enclosed diskette.

Please date stamp one copy and return it to the messenger for our files.

If you have any questions about this matter, please contact me at (202) 274-2953.

Sincerely,

William A. Mullins

Enclosure

ENTERED  
Office of Proceedings

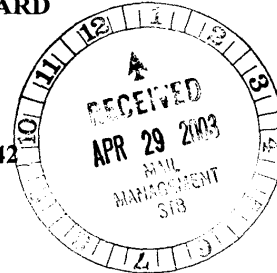
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BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

STB FINANCE DOCKET NO. 34342



KANSAS CITY SOUTHERN  
-- CONTROL --  
THE KANSAS CITY SOUTHERN RAILWAY COMPANY,  
GATEWAY EASTERN RAILWAY COMPANY,  
and  
THE TEXAS MEXICAN RAILWAY COMPANY

AMENDMENT TO THE PETITION FOR PROTECTIVE ORDER

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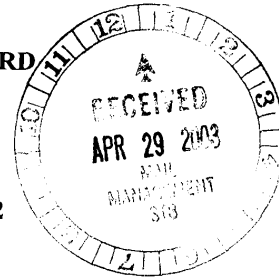
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Attorneys for Kansas City Southern, The  
Kansas City Southern Railway Company,  
and Gateway Eastern Railway Company

April 29, 2003

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.**

**STB FINANCE DOCKET NO. 34342**



**KANSAS CITY SOUTHERN  
-- CONTROL --  
THE KANSAS CITY SOUTHERN RAILWAY COMPANY,  
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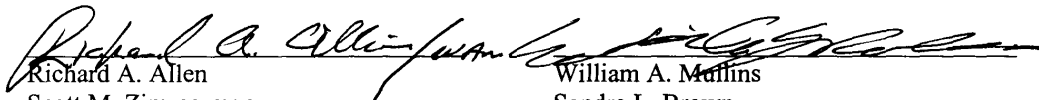
**AMENDMENT TO THE PETITION FOR PROTECTIVE ORDER**

On April 21, Kansas City Southern ("KCS"), The Kansas City Southern Railway Company ("KCSR"), Gateway Eastern Railway Company ("Gateway"), and The Texas Mexican Railway Company ("Tex Mex") (collectively, "Applicants") petitioned the Surface Transportation Board ("STB" or "Board") to issue a protective order in the above referenced proceeding. This amended petition is intended to make the protective order consistent with the Board's recent ruling in *Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology*, STB Ex Parte 638 (STB served April 3, 2003) ("*Procedures To Expedite*"). While it is not clear that that decision was intended to apply to all protective orders in all cases, it could be read to apply to proceedings outside of rail rate challenges.<sup>1</sup> Accordingly, in an abundance of caution and consistent with that decision, Applicants seek a protective order in the form attached hereto as Appendix A, pursuant to 49

<sup>1</sup> *Procedures To Expedite* at 9, "We will not approve any future proposed protective order that does not incorporate these provisions...."

C.F.R. §§ 1104.14 and 1180.4 (b) (4) (ii). This amended form clarifies that all parties are required to file a public copy of any submission filed with the Board and simultaneously file copies of any Highly Confidential or Confidential version, as appropriate. Any discovery materials that are not required to be filed with the Board must be served on counsel and parties as appropriate with a public version and Highly Confidential or Confidential Version as applicable. The Confidential Version may be served on the reviewing party in electronic format only. In lieu of preparing a Confidential Version, the filing party may provide to outside counsel for the reviewing party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel. The outside counsel for the reviewing party must then redact that material from the Highly Confidential Version before permitting its client to review the submission. WHEREFORE, Applicants respectfully request that the Board issue a protective order in the amended form attached hereto.

Respectfully submitted this 29<sup>th</sup> day of April, 2003.



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Attorneys for Kansas City Southern, The  
Kansas City Southern Railway Company, and  
Gateway Eastern Railway Company

## **APPENDIX A**

1. For purposes of this Protective Order:

(a) "Application" means an application filed, or intended to be filed in STB Finance Docket No. 34342 seeking authorization for Kansas City Southern ("KCS") to continue to control The Kansas City Southern Railway Company ("KCSR") and Gateway Eastern Railway Company ("Gateway"), and to acquire control of The Texas Mexican Railway Company ("Tex Mex").

(b) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(c) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost workpapers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business information.

(d) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 5 or 6 of this Protective Order, and any Confidential Information contained in such materials.

(e) "Proceedings" means those before the Surface Transportation Board ("Board") concerning the application in STB Finance Docket No. 34342, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No. 34342 or from any related proceedings before the Board.

2. Personnel of KCS, KCSR, Gateway, and Tex Mex and their affiliates, including outside consultants and attorneys for any of them ("representatives"), may exchange Confidential Information for the purpose of participating in the Proceedings, but not for any other business, commercial, or other competitive purpose, unless and until their Application in the Proceedings is approved.

3. To the extent that any meetings, conferences, exchanges of data, or other cooperative efforts between representatives of KCS, KCSR, Gateway or Tex Mex or their affiliates are held and carried out for purposes of these Proceedings, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the conduct and disposition of such Proceedings and will not be deemed a violation of 49 U.S.C. 11323 or 11904, or any other relevant provision of the ICCTA Termination Act of 1995 (ICCTA).

4. If the Application is disapproved by the Board, or if the Application is approved but control is not effected, or if no Application is filed, then all Confidential Documents (other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these proceedings) that are exchanged between KCS, KCSR, Gateway and Tex Mex but which are not otherwise available to them as a result of their existing affiliation and pursuant to their reporting responsibilities for securities, tax and other purposes, must be destroyed or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents. With respect to parties other than KCS, KCSR, Gateway and Tex Mex, if the Application is disapproved by the Board, or if the Application is approved but control is not effected, or if no Application is filed, then all Confidential Documents, other than file copies of pleadings and other documents filed with the Board and retained by outside

counsel for a party to these proceedings, must be destroyed or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents.

5. If any party to these Proceedings determines that any part of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

6. Any party producing material in discovery to another party to these Proceedings, or submitting material in pleadings or other documents filed or served, may in good faith designate and stamp particular Confidential Information, such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information, as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

7. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

8. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Order.

9. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenge(s).

10. Designated Material may not be used for any purposes other than these Proceedings, including without limitation any business, commercial, strategic, or competitive purpose.

11. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

12. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 C.F.R. § 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in

these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

13. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

14. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

15. If any party intends to use any Designated Material in the course of any deposition in these proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at

any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 12 of this Protective Order.

16. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, 5, or 6 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related Proceedings and will not be deemed a violation of 49 U.S.C. §§ 11323 or 11904 or of any other relevant provision of the ICCTA.

17. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

18. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

19. All parties must file a public version of any submission filed with the Board. Simultaneous to the filing of the public version all parties shall file any Highly Confidential or Confidential Version as applicable. Any discovery materials that are not required to be filed with the Board must be served on counsel and parties as appropriate with a public version and Highly Confidential or Confidential Version as applicable. The Confidential Version may be

served on the reviewing party in electronic format only. In lieu of preparing a Confidential Version, the filing party may provide to outside counsel for the reviewing party a list of all “highly confidential” information that must be redacted from its Highly Confidential Version prior to review by in-house personnel. The outside counsel for the reviewing party must then redact that material from the Highly Confidential Version before permitting its client to review the submission.

Exhibit A

UNDERTAKING -- CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, have read the Protective Order served on \_\_\_\_\_, 2003, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34342, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 34342, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with STB Finance Docket No. 34342 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

---

Signature

Dated: \_\_\_\_\_

Exhibit B

UNDERTAKING -- HIGHLY CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, am outside [counsel] [consultant] for \_\_\_\_\_,  
for whom I am acting in this proceeding. I have read the Protective Order served on \_\_\_\_\_, 2003, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34342, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 34342, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with STB Finance Docket No. 34342 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any

proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

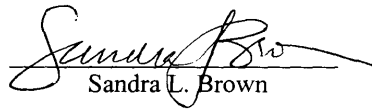
I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

\_\_\_\_\_  
Signature of Outside Counsel or Consultant

Dated: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Sandra L. Brown, hereby certify that on this 29<sup>th</sup> day of April, 2003, I served a copy of the foregoing Amendment to the Petition for Protective Order upon all entities required under 49 C.F.R. Part 1180.4(c)(5) to be served with a copy of an Application filed under Part 1180, by first class mail, postage prepaid.

  
Sandra L. Brown