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BEFORE THE
SURFACE TRANSPORTATION BOARD

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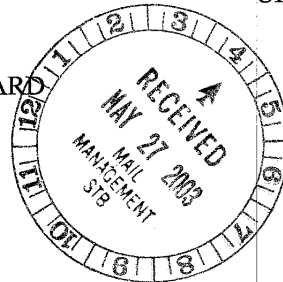
MAY 27 2003

Part of
Public Record

Finance Docket No. 34342

KANSAS CITY SOUTHERN
- CONTROL -

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN
RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY



**UNION PACIFIC RAILROAD COMPANY'S REPLY TO
APPLICANTS' PETITION TO ESTABLISH PROCEDURAL SCHEDULE**

Union Pacific Railroad Company ("Union Pacific") hereby requests that the Surface Transportation Board ("Board") reject the accelerated procedural schedule proposed by Kansas City Southern ("KCS"), The Kansas City Southern Railway Company ("KCSR"), Gateway Eastern Railway Company ("Gateway Eastern"), and The Texas Mexican Railway Company ("Tex Mex") (collectively, "Applicants").

Union Pacific urges the Board to make two modifications to Applicants' proposed schedule. First, Applicants should be provided with additional time at the beginning of the schedule to supplement their Application to address the effects of the proposed transaction in light of KCS's simultaneous acquisition of TFM S.A. de C.V. ("TFM"). Although the Application filed on May 14 acknowledges that the Tex Mex acquisition is part of a broader series of transactions that also involve TFM, Applicants have improperly failed to address any of the implications of the KCS/TFM transaction.

Second, once the Application has been supplemented, this proceeding should proceed on the schedule proposed by Applicants, with a modest expansion of the time for

interested parties to prepare their comments. Applicants propose a schedule that gives interested parties 16 days *less time* to conduct discovery and prepare comments than in either of the Board's recent "minor" control transactions, where considerably less was at stake. Union Pacific proposes a modest three-week expansion of the schedule, as summarized in Appendix A. The Board should modify Applicants' proposed schedule in this manner whether or not it requires Applicants to supplement their Application.

I. APPLICANTS' SCHEDULE SHOULD BE REVISED TO ACCOMMODATE A MANDATORY SUPPLEMENTATION OF THE APPLICATION TO ADDRESS THE CROSS-OVER EFFECTS OF THE KCS-TFM TRANSACTION

KCS's proposal to bring KCSR, Gateway Eastern and Tex Mex under common control is one small part of a much larger transaction that, as Applicants acknowledge, will place KCSR, Tex Mex, and TFM, Mexico's most important railroad, "under the common control of a single transportation holding company, NAFTA Rail." Application, Verified Statement of Michael R. Haverty ("Haverty V.S."), p. 53. As the Application notes, KCS announced on the same day its "series of agreements" with Grupo TMM, S.A. ("Grupo TMM") to acquire both Tex Mex and TFM. KCS's April 22, 2003 presentation to analysts in conjunction with that announcement (excerpts of which are Exhibit A hereto) underscores that the Tex Mex transaction is part of a single "strategic rationale" to achieve common control of Tex Mex and TFM.

The Application, however, contains no discussion whatsoever of the implications of the TFM acquisition. To the contrary, Applicants have studiously avoided any analysis of those implications, pretending as if TFM will remain an independent and neutral connection at Laredo. Applicants' market impact analyses do not consider the effects of combining TFM with KCSR and Tex Mex. Application, Verified Statement of Curtis M. Grimm, p. 87 n.12. And their traffic diversion analysis explicitly assume –

contrary to KCS's plans and intentions – that there will be no “changes in the railroad system structure, ownership, or cooperative arrangements.” Application, Verified Statement of Bengt Mutén, p. 119.

Applicants thus propose to have the Board review their proposed transaction in a fantasy world that ignores the most important part of KCS's planned formation of NAFTA Rail. Union Pacific appreciates that there is a theoretical potential that the TFM transaction will not proceed, and that Applicants thus have an obligation to attempt to justify the Tex Mex portion of their transaction on a stand-alone basis. But that obligation does not excuse them from the responsibility *also* to provide an analysis of the effects of KCS's anticipated addition of TFM to the NAFTA Rail fold. For example, under Grupo TMM control TFM has dealt fairly with its connections at the Laredo Gateway – Union Pacific and Tex Mex – and has cooperated extensively with Union Pacific to develop efficient U.S.-Mexico rate and service offerings. According to KCS's public statements, when TFM comes under the control of KCS it will have new incentives to “lengthen hauls through an ‘across-the-border view.” See KCS April 22, 2003 Presentation, p. 4 (Exhibit A). Yet the Application is silent on the implications of these incentives for KCS's competition with Union Pacific (or BNSF) or the volume of traffic flowing over Tex Mex-KCS routes. The following are just a few of the many questions that the Application fails to address: Will TFM continue to cooperate with UP via Laredo, or will it favor Tex Mex routings? What operational changes will take place at Laredo as a result of KCS's control of TFM? And how much more traffic do Applicants expect to carry over Tex Mex's lines when TFM has new incentives to steer U.S.-Mexico traffic to KCS and Tex Mex?

The Board has not hesitated to require applicants to provide supplemental information where necessary to “to enable [the Board] to evaluate fully the effects of the proposed transaction.”¹ Providing additional information is all the more important here, where the Application fails a central feature of the NAFTA rail transaction of which KCS control of Tex Mex is but one small part. The Board has recently emphasized that “transnational mergers are likely to raise novel jurisdictional, national interest, and public interest issues.”² The Board’s major merger rules thus require applicants to submit, with their applications, “‘full system’ competitive analyses and operating plans – incorporating any operations in Canada or Mexico – from which [the Board] can determine the competitive, service, employee, safety, and environmental impacts of the prospective operations within the United States,” as well as other information needed to gain “an accurate and comprehensive understanding of a major transnational merger application.”³ Although those rules are not formally applicable to the present transaction,⁴ they underscore

¹ *Union Pacific Corp., Union Pacific R.R., & Missouri Pacific R.R. – Control – Missouri-Kansas-Texas R.R.*, ICC Finance Docket No. 30800 (ICC served Oct. 24, 1986), p. 4; *see also, e.g., CSX Corp. & CSX Transportation, Inc., Norfolk Southern Corp. & Norfolk Southern Ry. – Control & Operating Leases/Agreements – Conrail Inc. & Consolidated Rail Corp.*, STB Finance Docket No. 33388 (“CSX-NS-Conrail”) (STB Decision No. 44 served Oct. 15, 1997) (requiring applicants to submit supplemental operating plan information); *CSX-NS-Conrail* (STB Decision No. 19 served Aug. 7, 1997) (requiring applicants to submit supplemental information concerning proposed train schedules); *R.J. Corman R.R./Memphis Line – Purchase & Lease – CSX Transportation, Inc. Line Between Warwick & Uhrichsville, OH*, ICC Finance Docket No. 31388 (Sub-No. 1) (ICC served Apr. 7, 1989) (requiring applicants to submit supplemental information concerning owner of applicant carrier).

² *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1) (STB served June 11, 2001), p. 46.

³ *Id.* at 45-46; *see also* 49 C.F.R. § 1180.1(k).

⁴ Union Pacific notes, however, that TFM would qualify as a Class 1 railroad were its operations located in the United States.

the importance of evaluating the proposed transaction on a complete record that addresses the implications of KCS control of TFM.

The Board's traditional "one case at a time" principle does not allow Applicants to escape their obligation to have this case decided on a complete record. That principle, which was embodied in the Board's now-repealed Class 1 merger rules, provided that pending proceedings would not be "reopen[ed]" in order to "assess the impact of potential or hypothetical combinations or transactions." Instead, "cumulative impacts and crossover effects" would be considered in "a later proceeding."⁵ This rule has no application in the present circumstances, where the KCS-Tex Mex transaction is from the outset being proposed as one part of the broader KCS-initiated NAFTA Rail consolidation. The KCS-TFM transaction is not speculative; it is underway now. Moreover, Applicants have made it clear that this proceeding presents the only opportunity for the Board to consider the effects of the KCS-TFM transaction. There will not be "a later proceeding," Applicants explain, because the Board lacks jurisdiction over KCS's acquisition of TFM.

Applicants should be required to supplement their Application as soon as possible – or refile it in its entirety – to address the implications for their proposed KCS-Tex Mex transaction of the looming addition of TFM to the NAFTA rail system.⁶ Applicants' proposed procedural schedule should be held in abeyance for however long Applicants

⁵ See former 49 C.F.R. § 1180.1(g) (repealed 2001). The Board's new major merger rules explicitly back away from rigid application of this principle in favor of a sensible assessment of cumulative and crossover effects in the initial transaction. See 49 C.F.R. § 1180.1(i).

⁶ Union Pacific is *not* contending that KCS's acquisition of TFM is subject to the Board's jurisdiction under 49 U.S.C. § 11323. However, common control of KCS and Tex Mex *is* subject to the Board's jurisdiction, and the effects of that transaction – as one part of the broader NAFTA Rail plan – must be evaluated by the Board on a complete record.

would need to prepare their supplemental evidence – which Union Pacific anticipates would not be long. Applicants’ proposed schedule, modified as Union Pacific proposes below, could then resume as soon as a properly supplemented Application is filed.

II. APPLICANTS’ SCHEDULE SHOULD BE REVISED TO ALLOW MODEST ADDITIONAL TIME FOR INTERESTED PARTIES TO PREPARE COMMENTS

Whether or not the Applicants are required to supplement their Application, the Applicants’ proposed schedule does not allow interested parties sufficient time to conduct discovery and prepare comments addressing the significant competitive issues raised by this proceeding. Contrary to Applicants’ portrayal, this case is not merely about KCS and Tex Mex further cementing their already close working relationship. It involves TFM (and its parent Grupo TMM) relinquishing to KCS control over the north half of the International Bridge at Laredo, across which all international rail traffic moving through the Laredo Gateway must pass.⁷ The Board will be called upon to consider whether conditions must be placed on KCS’s control of this vital asset in order to ensure that shippers continue to benefit from effective rail competition via the Laredo Gateway.

By any measure the proposed transaction is significant, regardless of how it is technically classified under the Board’s regulations. The Board should provide interested parties at least as much time to investigate and comment as in the recent “minor” control proceedings in which much less was at stake. Applicants intend for their transaction to have national transportation significance. It will affect “U.S. shippers and the nation as a whole.”

⁷ As Applicants acknowledge, Mexrail, Inc. control of which KCS will acquire in this transaction, owns the U.S. portion of the International Bridge. Application, p. 10 n.1. Tex Mex owns and operates the track Union Pacific uses to reach a connection with TFM at the U.S.-Mexican border in the middle of the bridge. See *Mexrail, Inc. v. Union Pacific R.R. & Missouri Pacific R.R.*, STB Finance Docket No. 32980 (STB served July 13, 2000), pp. 1-3.

Application, Haverty V.S., p. 65. Applicants assert that bringing KCSR and Tex Mex under common control “represents one more step in KCS’ efforts to develop a ‘Nafta Railroad’ that would connect Canada, the U.S., and Mexico and provide seamless, efficient, and competitive rail service in all of North America.” Application, pp. 10-11.

The Board has previously expressed special concern for maintaining competition at the Laredo Gateway, which it recognizes as “the most important U.S.-Mexican rail gateway.” *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233, 422 (1996). Indeed, Tex Mex owes its extensive trackage rights over Union Pacific to precisely that concern. *Id.* The transaction potentially will affect the approximately 274,000 cars of rail traffic that cross the Laredo Gateway (*see* Application, p. 28) by giving KCS day-to-day operating control over the International Bridge. Tex Mex’s previous parents – Grupo TMM and TFM – had powerful incentives to ensure that UP-TFM traffic was handled efficiently and fairly at Laredo, because TFM participated in the traffic no matter how it was routed in the United States. KCS, by contrast, has strong incentives to use its control over Tex Mex to favor its own “Nafta Railroad” routings.⁸ Indeed, Applicants have emphasized that KCS control will change Tex Mex’s behavior. By eliminating TMM’s influence over Tex Mex, their proposed transaction will remove “sometimes contradictory marketing and operating goals being pursued by KCS and TMM.”⁹

⁸ Applicants note that “with 100% ownership [of Tex Mex], it is in KCS’s own interest to try to get as much traffic as possible on the Tex Mex line.” Application, Haverty V.S., p. 60.

⁹ Application, p. 30; *see also id.*, Haverty V.S., p. 57 (explaining that the transaction will “eliminate disparate goals that sometimes result from having two separate owners”).

The importance of the proposed transaction is magnified by KCS's simultaneous plan to acquire control of TFM. *See* Application, pp. 9-10; *id.*, Haverty V.S., pp. 53-55. Although the Applicants do not propose to seek Board approval of that transaction, its pendency does raise important issues concerning the effects of that transaction on the Tex Mex acquisition, as well as potentially complicated questions regarding the extent of the Board's jurisdiction.

Applicants do not even mention, much less address, the potentially significant effects of KCS's new chokehold over the Laredo gateway. Applicants have thus failed to confront the issues that will be central to this proceeding, and their proposed procedural schedule would make it difficult for other parties to address those issues adequately. Union Pacific has already begun its analysis of the proposed transaction, and has already served discovery on Applicants addressing the central competitive issue in this case. But the Applicants' proposed schedule calls for comments to be submitted by July 14, a mere 48 days hence, and only 61 days after the Application was filed.¹⁰ Applicants have proposed a schedule that is approximately three weeks shorter than the schedules for the two most recent "minor" control cases – *CN/WC* and *DM&E/IC&E* – both of which gave interested parties 77 days to prepare and file their comments.¹¹ Union Pacific accordingly

¹⁰ The Applicants' proposed schedule indicates that the Application was filed on Tuesday, May 13, 2003, but it was actually filed on Wednesday, May 14, 2003.

¹¹ *Dakota, Minnesota & Eastern R.R. & Cedar American Rail Holdings, Inc. – Control – Iowa, Chicago & Eastern R.R.*, STB Finance Docket No. 34178 (STB Decision No. 2 served Sept. 26, 2002) ("*DME/ICE*"), p. 17 (providing 77 days between filing of application and comments); *Canadian National Ry., Grand Trunk Corp., & WC Merger Sub Inc. – Control – Wisconsin Central Transportation Corp., Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Co. & Wisconsin Chicago Link Ltd.*, STB Finance Docket No. 34000 (STB Decision No. 2 served May 9, 2001), p. 15 (providing 77 days between filing of application and comments).

urges the Board to establish a schedule under which parties would have three additional weeks to prepare their comments, which would bring the schedule for this case closely in line with the time permitted in *CN/WC* and *DM&E/IC&E*. If they are required to Supplement their Application, comments should be due 82 days thereafter, instead of the 61 days proposed by Applicants. If Applicants are not required to supplement their Application, comments would be due on Monday, August 4, 2003, which is just three weeks later than proposed by the Applicants.

Applicants attempt to justify their shorter schedule based on the smaller size of the entity being acquired. *See* Petition to Establish Procedural Schedule, p. 5 (“Applicants’ Petition”). But Tex Mex’s participation in U.S.-Mexico traffic flows and its control over the vital Laredo gateway give it a degree of importance that far outweighs its size. Applicants also suggest that a shorter schedule is justified by the already close relationship among the Applicants. *See id.* Applicants go so far as to suggest that this transaction should have qualified for a “corporate family exemption” or should “fall outside of the Board’s jurisdiction pursuant to the single-system doctrine,” were it not for the annoying detail that the Board has not *authorized* KCS to control Tex Mex. *Id.* at 3; *see also* Application, pp. 15-16. However, as noted above, Applicants also acknowledge that control of Tex Mex by Grupo TMM/TFM has resulted in Tex Mex pursuing different marketing and operational strategies than KCS would prefer, underscoring the threat that KCS control poses to effective competition at the Laredo gateway. *See* page 7 and note 9, *supra*. Applicants also say that they will bear the principal burden of the shorter schedule. *See* Applicants’ Petition, pp. 6-7. But they are mistaken. As compared to the schedules in *CN/WC* and *DM&E/IC&E*, Applicants’ proposal would reduce the time for other parties to

investigate and file comments by more than two weeks, while reducing their own time for filing rebuttal comments by less than ten days.

Union Pacific believes that the manifest significance of this transaction – which will give one competitor control over the most important gateway for U.S.-Mexico rail traffic – makes it doubtful whether it qualifies as a “minor” transaction under the Board’s rules. However, Union Pacific takes no position on whether the Board must treat this transaction as “significant.” Union Pacific’s concern is that the procedural schedule reflect the issues involved, not the track miles of the entity being acquired. Union Pacific and other interested parties will require time to address the weighty issues presented by the proposed transaction, particularly those that were not addressed in the Application. It has already propounded discovery requests aimed at understanding the transaction’s effects on the Laredo Gateway, the shifting incentives associated with KCS’ acquisition of control of Tex Mex, and other issues.¹² This transaction involves matters that are far more significant than those in *CN/WC* and *DM&E/IC&E*. Neither of those proceedings involved a change in control of a key international gateway. Neither of those proceedings involved anywhere near the more than 274,000 railcars of traffic potentially affected by this proceeding. There is no justification for allowing parties less time to comment in this case than in *CN/WC* and *DM&E/IC&E*.

Union Pacific proposes an overall procedural schedule that – once a properly supplemented Application is before the Board – is the same as Applicants’ proposed schedule except that it would extend the due date for comments by twenty days. Union

¹² A copy of Union Pacific’s discovery requests is attached as Exhibit B.

Pacific's proposed schedule is consistent with the overall timeframes established for "minor" transactions and would result in the issuance of a final Board decision in less than the 180-day maximum set by 49 U.S.C. § 11325(d). This proposal would allow parties just five more days to file comments than in *CN/WC* and *DM&E/IC&E*, and that additional time is fully justified by the transactions' significance and the questions raised by the Application.

CONCLUSION

We urge the Board to reject Applicants' proposed schedule, require that Applicants promptly supplement their Application to address the implications of KCS-TFM common control, and adopt the modified schedule proposed by Union Pacific.

Respectfully submitted,

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May 27, 2003

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, hereby certify that on this 27th day of May, 2003, I served a copy of Union Pacific's Reply To Applicants' Petition To Establish Procedural Schedule ("UP-1") by hand on:

William A. Mullins
David C. Reeves
Sandra L. Brown
Elizabeth A. Martin
Troutman Sanders LLP
401 Ninth Street, NW
Suite 1000
Washington, DC 20004-2134

Richard H. Streeter
Barnes & Thornburg
750 Seventeenth Street, NW
Suite 900
Washington, DC 20006

and by overnight mail on:

W. James Wochner
Thomas J. Healy
Kansas City Southern
427 West 12th Street
Kansas City, MO 64105

and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all other parties of record in Finance Docket No. 34342.



Michael L. Rosenthal

APPENDIX A: PROPOSED SCHEDULE

Event	Proposed by Applicants ¹³		UP's Proposed Modifications		Notes
	(Filing + 0)	Wednesday, May 14, 2003*	(Filing + 0)	Wednesday, May 14, 2003	
Application and Petition for Procedural Schedule filed					no change
Application accepted and notice published in the <u>Federal Register</u>	(Filing + 30)	Friday, June 13, 2003*	(Filing + 30)	Friday, June 13, 2003 (Would be postponed until 30 days after Applicants supplement their Application if supplementation required.)	no change
Safety Integration Plan ("SIP") filed	(Filing + 30)	Friday, June 13, 2003*	(Filing + 30)	Friday, June 13, 2003 (Would be postponed until 30 days after Applicants supplement their Application if supplementation required.)	no change
Notice of Intent to Participate due	(Filing + 36)	Thursday, June 19, 2003	(Filing + 36)	Thursday, June 19, 2003 (Would be postponed if supplementation required.)	no change
Applicant distributes SIP to parties of record	(Filing + 40)	Monday, June 23, 2003	(Filing + 40)	Monday, June 23, 2003	no change

¹³ We have adjusted certain of applicants' proposed dates (as denoted by "*"*) to reflect the fact that the Application was not filed until May 14, 2003.

Event	Proposed by Applicants ¹³		UP's Proposed Modifications		Notes
	(Filing + 61)	Monday, July 14, 2003	(Filing + 82)	Monday, August 4, 2003 (Would be postponed until 82 days after Applicants supplement their Application if supplementation required.)	
All Comments Due, including filings of the U.S. Department of Justice and the U.S. Department of Transportation					Extends time for interested parties to prepare comments by three weeks.
Comments on SIP due	(Filing + 61)	Monday, July 14, 2003	(Filing + 61)	Monday, July 14, 2003 (Would be postponed if supplementation required.)	no change
Rebuttal due (close of record)	(Filing + 82)	Monday, August 4, 2003	(Filing + 103)	Monday, August 25, 2003 (Would be postponed if supplementation required.)	Maintains Applicants' proposed 21-day period for preparing rebuttal.
Final decision to be served	(Filing + 127)	Thursday, September 18, 2003	(Filing + 148)	Thursday, October 9, 2003 (Would be postponed if supplementation required.)	Maintains 45 days for preparation of the decision.
Decision becomes effective	(Filing + 132)	Tuesday, September 23, 2003	(Filing + 153)	Tuesday, October 14, 2003 (Would be postponed if supplementation required.)	Maintains 5 days between final decision and effective date.

EXHIBIT A

**NAFTA
Rail**

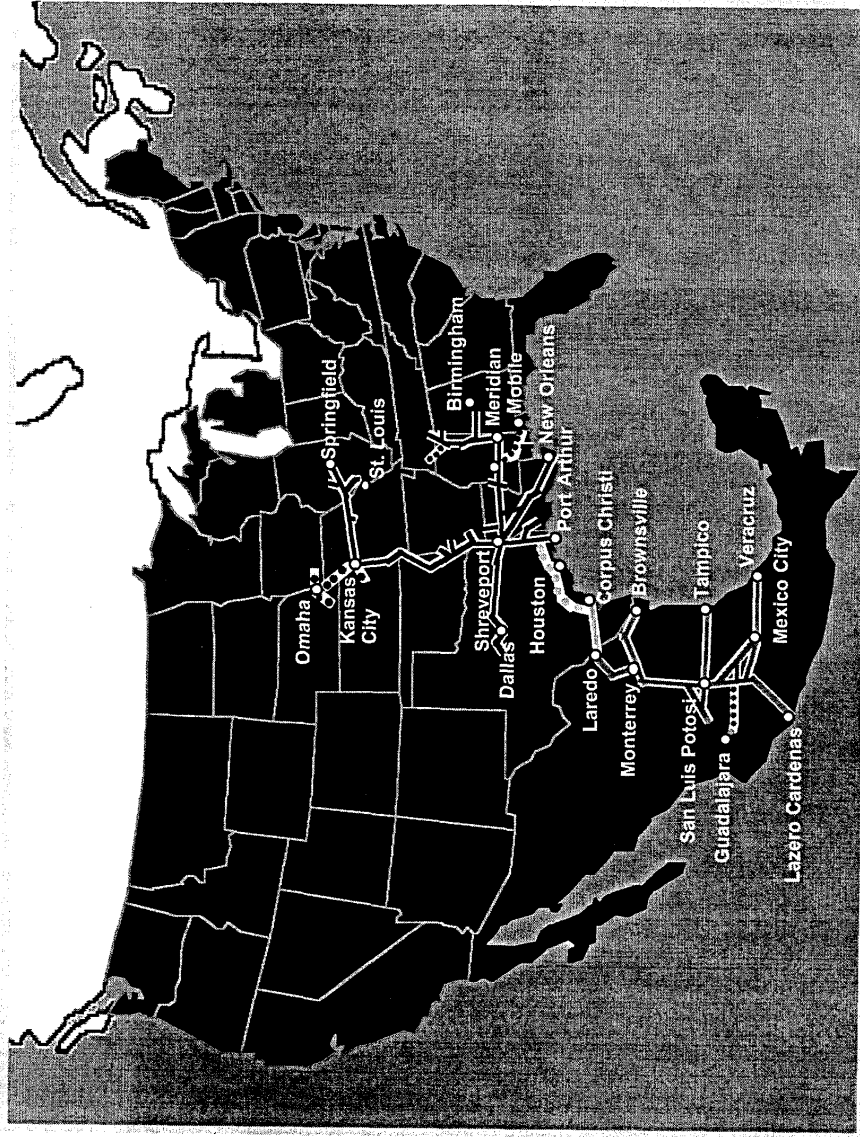


transaction summary

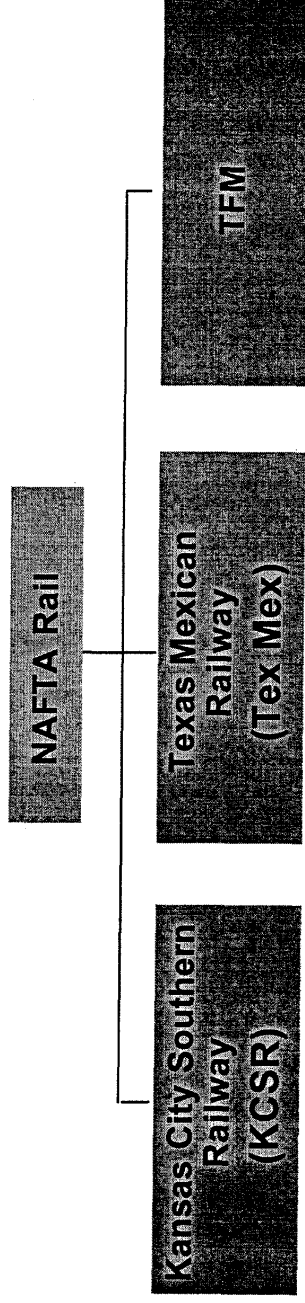
NAFTA
Rail



KCSR, Tex Mex, TFM Operating Under Common Control



Common Control



- NAFTA Rail will be a U.S. corporation, headquartered in Kansas City, with three separate railroad companies that connect end to end and operate under integrated management
 - KCS and Tex Mex are U.S. corporations
 - TFM is a Mexican corporation
- Surface Transportation Board approval of the common control of KCSR and Tex Mex is required
- Mexico's Foreign Investment Commission will review the foreign control of TFM
- Mexico's Competition Commission will review the transaction for competitive effects

Strategic Rationale for NAFTA Rail

- Enhance shareholder value by achieving consolidation of rapidly expanding TFM affiliate in Mexico, with U.S. ownership
- Accretive from day one
- Improve Tex Mex infrastructure and operations to better link the Kansas City Southern Railway with TFM
- Strengthen KCSR/Tex Mex/TFM as the “NAFTA Railroad” in North America
- Increase EPS contribution from faster-growing rail operations in Mexico
- Lengthen hauls through an “across-the-border” view



EXHIBIT B

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34342

KANSAS CITY SOUTHERN
– CONTROL –
THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN
RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

**UNION PACIFIC RAILROAD COMPANY'S
FIRST SET OF DISCOVERY REQUESTS TO APPLICANTS**

Pursuant to 49 C.F.R. §§ 1114.21-31, Union Pacific Railroad Company (“UP”) requests that Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “Applicants”) respond to the following discovery requests in accordance with the Surface Transportation Board’s rules and the definitions and instructions set forth below.

Responses should be served as soon as possible, and in no event later than 15 days from the date of service hereof. Applicants are requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

DEFINITIONS OF RAILROAD ENTITIES

1. “KCS” means Kansas City Southern.
2. “KCSR” means The Kansas City Southern Railway Company and Gateway Eastern Railway Company, individually and collectively.
3. “Tex Mex” means The Texas Mexican Railway Company.

4. "TFM" means TFM, S.A. de C.V.
5. "TMM" means Grupo TMM, S.A.
6. "UP" means the Union Pacific Railroad Company and its

predecessors, including, but not limited to, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, and Southern Pacific Transportation Company, individually and collectively.

ADDITIONAL DEFINITIONS AND INSTRUCTIONS

1. "Applicants" means Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company.

2. "Application" means the Railroad Control Application (designated KCS-3/TM-3) filed by Applicants in Finance Docket Nos. 34342 on May 14, 2003.

3. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, telegrams, memoranda, contracts, instruments, studies, projections, forecasts, summaries or records of conversations or interviews, minutes or records of conferences or meetings, records or reports of negotiations, diaries, calendars, photographs, maps, tape recordings, computer tapes, computer disks, other computer storage devices, computer programs, computer printouts, models, statistical statements, graphs, charts, diagrams, plans, drawings, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices,

receipts, financial statements, accounting records, worksheets, drafts, revisions of drafts, and original or preliminary notes. Further, the term "document" includes

- (a) both basic records and summaries of such records (including computer runs);
- (b) both original versions and copies that differ in any respect from original versions; and
- (c) both documents in the possession, custody or control of Applicants and documents in the possession, custody or control of consultants or others who have assisted Applicants in connection with this proceeding.

4. "Laredo Bridge" means the International Rail Bridge over the Rio Grande River at Laredo/Nuevo Laredo.

5. "Proposed Transactions" means the series of agreements described on pages 1-2 of the Application.

6. "Produce" means to make legible, complete and exact copies of responsive documents and send them by expedited delivery to the undersigned counsel. The originals of responsive documents should be retained in the files of Applicants, its counsel, or the consultants or others who have assisted Applicants in connection with this proceeding and have documents in their possession, and made available if requested. Applicants will pay all reasonable costs for duplication and expedited delivery of documents to their attorneys.

7. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.

8 If any information or document is withheld on the ground that it is privileged or otherwise not discoverable:

- (a) identify the type of document (*e.g.*, letter, memorandum, report, chart); identify the author, each addressee and each recipient; state the number of pages, title and date of the document; and
- (b) state the basis for the claim that it is privileged or otherwise not discoverable.

9. References to railroads, shippers, consultants or companies (including any of Applicants) include affiliates, subsidiaries, predecessors, successors, officers, directors, employees, attorneys, agents and representatives thereof.

10. All uses of the conjunctive include the disjunctive and vice versa.
Words in the singular include the plural and vice versa.

11. Unless otherwise specified, these requests cover the period January 1, 1997 and thereafter.

12. To the extent materials called for herein are confidential, UP will treat it in accord with the Protective Order entered in this proceeding in the Decision served May 13, 2003.

REQUESTS

1. Produce in a computer-readable format the "2001 KCS and GWRR 100% Waybill Records," referenced on page 119 of the Application, as well as the 100% Waybill Records for Tex Mex, along with information necessary to read the data (*e.g.*, record layout, field names and definitions, definitions of terms or abbreviations used in the fields).

2. Produce all workpapers for the following portions of the Application:
 - (a) Application pages 27-28 (carry-over paragraph);
 - (b) Verified Statement of Curtis M. Grimm; and
 - (c) Verified Statement of Bengt Mutén.
3. Produce all documents relating to the “set of diversion rules and percentages,” referenced on page 120 of the Application, including but not limited to documents relating to the development of those diversion rules and percentages.
4. Describe in detail and produce all documents relating to the effect of Proposed Transactions on traffic diversions in addition to or different from those diversions addressed in the Verified Statement of Bengt Mutén.
5. Produce a copy of each “cooperative agreement” that KCS, KCSR, TFM, and/or Tex Mex has with other carriers, including but not limited to the specific agreements referenced on pages 26-27 of the Application, as well as all documents relating to the effect of the Proposed Transactions on those agreements.
6. Produce all documents relating to marketing agreements or proposed marketing agreements (a) between KCSR and TFM; and (b) among KCSR, TFM, and any other railroad, as well as all documents relating to the effect of the Proposed Transactions on these agreements.
7. Produce the agreements that may “not provide adequate revenues to a combined KCSR/Tex Mex system,” referenced on page 26 note 19 of the Application, as well as the “agreements specific to Tex Mex and other carriers not involving KCSR” that

may “not provide a combined KCSR/Tex Mex with sufficient revenues to cover cost,” referenced on page 60 note 3 of the Application.

8. Produce all documents relating to:

- (a) the “sometimes contradictory marketing and operating goals being pursued by KCS and TMM,” referenced at page 30 of the Application;
- (b) the “disparate goals that sometimes result from having two separate owners,” referenced at page 57 of the Application; and
- (c) the “different growth objectives for Tex Mex’s operations,” referenced at page 63 note 6 of the Application.

9. Produce all documents describing, analyzing, studying or discussing marketing, pricing, and/or operations of U.S.-Mexico rail traffic, including but not limited to documents addressing differences between the views and/or incentives of KCS, on the one hand, and TMM, TFM, and/or Tex Mex, on the other hand, regarding these issues.

10. Identify and produce all documents reflecting agreements or understandings among KCS, TMM, TFM and/or Tex Mex pertaining to marketing, pricing and/or operation of U.S.-Mexico rail traffic.

11. Produce all correspondence pertaining to agreements or understandings identified in response to Request No. 10. You may exclude documents of a routine transactional nature (*e.g.*, waybill or dispatching records), provided that you identify the categories of documents so excluded.

12. Identify all actions that were not taken by Tex Mex and/or TFM because such actions were not approved by one or the other of “2 management groups –

GTMM and KCS, the principal owners of TFM,” referenced on page 142 of the Application. and produce all documents relating to those actions.

13. Produce all agreements, protocols, guidelines or other documents describing or governing the operation of the Laredo Bridge and/or train operations that traverse the Laredo Bridge.

14. Produce all documents reflecting or describing communications between or among KCS, TFM, TMM, and/or Tex Mex concerning operation of the Laredo Bridge and/or train operations that traverse the Laredo Bridge.

15. Produce all documents studying, analyzing, or discussing ownership or control of the Laredo Bridge, including ownership and control of the bridge structure, the rail, and the associated track materials, including but not limited to any communications regarding such issues.

16. Produce all documents studying, analyzing or discussing the effect of the Proposed Transactions on operations over the Laredo Bridge, including but not limited to any communications regarding such effects.

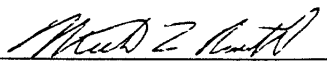
17. Produce all documents studying, analyzing or discussing the transaction under which “Mexrail, the holding company for Tex Mex, was sold to TFM,” as described on page 56 note 2 of the Application, including without limitation the agreements underlying those transactions and all documents relating to the effects of the transaction.

18. Produce all documents regarding traffic interchanged between TFM and UP at Laredo provided to KCS by TFM or Tex Mex.

19. Produce a copy of all documents and information produced to other parties in response to discovery in this proceeding.

Respectfully submitted,

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May 21, 2003

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, hereby certify that on this 21st day of May, 2003, I served a copy of Union Pacific's First Set of Discovery Requests to Applicants by hand on:

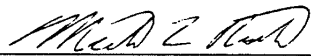
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Kansas City, MO 64105

and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all other parties of record in Finance Docket No. 34342.



Michael L. Rosenthal