



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

207935

GENERAL COUNSEL

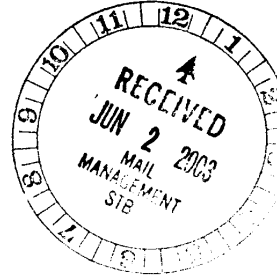
400 Seventh St., S.W.
Washington, D.C. 20590

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Office of Proceedings

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Part of
Public Record

June 2, 2003



Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 34342

Dear Secretary Williams:

Enclosed herewith are the original and ten copies of the Response of the United States Department of Transportation to the Proposed Procedural Schedule in the above-referenced proceeding. There is also a computer diskette of this document, convertible into Word Perfect. I have included as well an additional copy that I request be date-stamped and returned with the messenger.

Respectfully submitted,

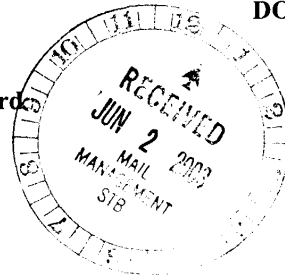
Paul Samuel Smith
Senior Trial Attorney
(202) 366-9280

Enclosures

cc: Counsel for Applicants

DOT-1

Before the
Surface Transportation Board
Washington, D.C.



_____)
Kansas City Southern -- Control -- The Kansas City
Southern Railway Company, Gateway Eastern
Railway Company, and The Texas Mexican
Railway Company _____)

Finance Docket No. 34342

**Response of the United States Department of Transportation
to the Proposed Procedural Schedule**

Introduction

In this proceeding Kansas City Southern seeks the approval of the Surface Transportation Board ("STB" or "Board") to bring under its control three rail carriers -- the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company (collectively, "Applicants"). The Applicants have petitioned the Board to adopt a procedural schedule that does not take into account the traditional participation of the United States Department of Transportation ("DOT" or "Department") in such matters. Petition filed May 13, 2003. DOT therefore requests that the proposed schedule be modified as discussed below.

Discussion

The Applicants seek an expedited schedule that, as here relevant, contains one opportunity for comments by all interested parties and a reply thereto by the Applicants twenty-one days later, followed by a decision from the Board within forty-five days. Id.

This sequence does not allow for the Department's historical practice, followed in virtually all rail consolidation cases (and certain other proceedings), of expressing its substantive views on pending issues only after considering the submissions of other interested parties. DOT follows this approach in order to assess and comment upon a record that consists of more than simply the submissions of the applicants in any given matter.¹ In proceedings similar to this one the Board has consistently been sensitive to the Department's reluctance to comment on the merits in the face of an incomplete record, usually by providing an opportunity for responsive comments. *See, e.g.*, Fin. Dkt. No. 34178 (Dakota, Minnesota & Eastern/Iowa, Chicago & Eastern railroad merger), Decision No. 2, served September 26, 2002; Fin. Dkt. No. 34000 (Canadian National/Wisconsin Central railroad merger), Decision No. 2, served May 9, 2001. DOT has always appreciated this consideration.

Although the instant transaction may properly be considered "minor" under applicable regulations, the application and related filings may present issues that attract significant interest from railroads and others. We therefore ask that the STB again permit the Department the opportunity to take a substantive position on the issues presented by this transaction after the record has been developed through the submissions of other interested parties. A period of twenty-one days following the initial filings of other parties would be consistent with both the time the Applicants have allowed for their own

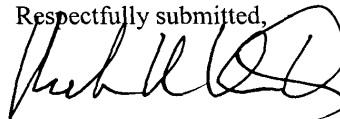
¹/ The role of the Department in STB proceedings is ultimately grounded in the statutory and regulatory provisions and administrative orders that govern this transaction, and in DOT's statutory responsibilities as the Executive Department of the United States established by Congress "to provide general leadership in identifying and solving transportation problems," to the end that the Secretary of Transportation "shall provide leadership in the development of transportation policies and programs." 49 U.S.C. §§ 101(b)(5), 301(2), respectively.

response and with the applicable statutory time frame. 49 U.S.C. § 11325(c), (d). DOT, of course, would not object to an additional allocation of time for the Applicants to file in rebuttal, thereby preserving the traditional right of applicants to close the record.

Conclusion

For the foregoing reasons, the Department requests that the Board adopt a procedural schedule that permits DOT to file comments on the merits in this proceeding after the initial comments of interested third parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kirk K. Van Tine", written over the typed name.

KIRK K. VAN TINE
General Counsel

June 2, 2003