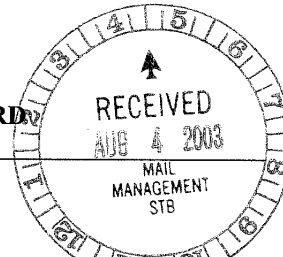


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34342

KANSAS CITY SOUTHERN — CONTROL — THE KANSAS CITY SOUTHERN RY. CO. ET AL

COMMENTS ON BEHALF OF

E. I. DUPONT DE NEMOURS AND COMPANY

Office of Proceedings

AUG - 4 2003

Part of
Public Record

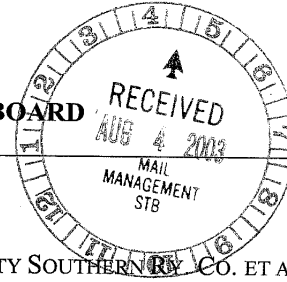
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Dated: August 4, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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In accordance with the procedural schedule established by the Board in Decision No. 2 in this proceeding (served on June 9, 2003), these Comments are submitted on behalf of E. I. du Pont de Nemours and Company ("DuPont").

BACKGROUND

On May 14, 2003, Kansas City Southern ("KCS") filed an application with the Board for approval under 49 U.S.C.A. §§ 11323 – 11325 of its proposed acquisition of control of The Texas Mexican Ry. Co. ("Tex Mex"). In a related transaction not subject to approval by the Board, KCS is also seeking to acquire control of TFM, S.A. de C.V., a rail carrier operating within Mexico. TFM and Tex Mex operate over rail facilities on both sides of the international border crossing at Laredo, TX/Nuevo Laredo, Tamaulipas, Mexico, including the rail bridge that crosses the international border.

In Decision No. 2, the Board accepted the application, and found that the KCS acquisition of Tex Mex should be treated as a "minor transaction" under 49 C.F.R. § 1180.2(c). However, the Board required the Applicants to supplement their application

“to reflect the implications of the broader transaction for competition within the U.S.”
and to include the information specified in 49 C.F.R. § 1180.1(k)(1) and § 1180.11.¹

IDENTITY AND INTEREST OF DUPONT

DuPont is a \$26 billion diversified chemical and life sciences corporation with over 200 manufacturing sites and almost 80,000 employees worldwide. DuPont offers a wide range of products and service to markets including agriculture, nutrition, electronics, communications, safety and protection, home and construction, transportation and apparel. Rail transportation is critical to DuPont’s domestic and export business, and is for many of its chemical products the only safe and practical mode of transportation. Each year, DuPont and its affiliates ship in excess of 70,000 rail shipments, representing over \$185 million in railroad freight revenue, in a private fleet of over 6,000 rail cars. More importantly, these shipments are the fundamental basis of DuPont’s diverse global supply chains, and directly produce \$5.5 billion of North American sales and exports. 75% of this has no other transportation alternative, either because of safety considerations or sheer volume. DuPont has a significant interest in the growing trade between the U.S. and Mexico that has developed since the adoption of the North American Free Trade Agreement.

DuPont has six major manufacturing sites in Mexico. In addition, DuPont’s cross-border rail traffic includes vendor shipments both to DuPont Mexico and to plants in the U.S., as well as DuPont direct sales shipments to Mexican and U.S. customers. Laredo is the primary border crossing for DuPont rail shipments. Rail shipments include hazardous and non-hazardous commodities moving both southbound and northbound. At

¹ Ordinarily, those requirements are only applicable to “major transactions” between two or more

Laredo, both UP and Tex Mex handle cross-border DuPont shipments from and to TFM. Laredo cross-border rail volumes are expected to see double-digit annual percentage increases for the next five years.

GOVERNING STANDARDS

Under the provisions of 49 U.S.C.A. § 11324(d), an application for approval of minor control transaction such as this one must be granted unless the Board finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. *Canadian National Ry. Co. et al. — Control — Wisconsin Central Transportation Corp., et al.* __ S.T.B. __ (Fin. Docket No. 34000, served Sept. 7, 2001), slip op. at 10.

DuPont believes the Kansas City Southern/Texas Mexican (KCS/TM) transaction represents a significant across-the-board improvement opportunity that will benefit the Applicants, the rail industry, and the public. DuPont's comments will focus on two areas where the Application, as supplemented by additional undertakings by the Applicants, will enhance both the public interest and the competitive environment, and should be approved.

COMMENTS

APPROVAL OF THE APPLICATION WILL ENHANCE THE SAFETY, HEALTH AND ENVIRONMENTAL PERFORMANCE OF TEX MEX

DuPont has a long and intense focus on safety in all aspects of its operations. One of the ways DuPont has responded to public concerns about the safe management of

Class I rail carriers.

chemicals is through the American Chemistry Council's (ACC) Responsible Care® Program. This Program was launched in 1988. ACC members are publicly committed to the continuous improvement of the industry's health, safety, and environmental performance. The Program is built around progressive principles and flexible management practices. Its scope addresses practices from product design and development to distribution and disposal.

DuPont looks to its rail suppliers to share in a similar commitment to outstanding safety, health, and environmental performance. For DuPont, this carrier commitment is business-critical in that any failure on the part of carriers to achieve outstanding performance in these areas directly affects DuPont's "right to operate."

For DuPont, the best practice in this area is the Responsible Care® Partnership Program. All of the Class 1 railroads, including the KCS, are now Partner companies. DuPont believes Partner companies consistently differentiate themselves in significantly better safety-health-environmental performance versus non-Partner companies. Tex Mex is not currently a Partner company.

DuPont is especially pleased that KCS has now made a commitment to integrate the Tex Mex into the KCS Responsible Care® Partnership Program. This public commitment is reflected in a July 29 supplement to the Applicant's initial Safety Integration Plan.² DuPont believes that this Partnership commitment will result in a measurable and significant improvement in the safety-health-environmental performance of Tex Mex. Tex Mex, and the customers and communities that it serves, should see marked improvement in Tex Mex performance in each of the Partnership's Codes of Management Practices that include:

- Community Awareness
- Pollution Prevention
- Process Safety
- Distribution
- Employee Health and Safety
- Product Stewardship

Based on the KCS Partnership experience, DuPont believes that this integration will likely result in a number of significant TM improvements including:

- Reduction in FRA reportable injuries
- Reduction in FRA reportable derailment expenses
- Reduction in grade-crossing injuries
- Increased emergency response drills
- Additional management resources
- Improved processes
- Enhanced security plans
- Stronger and more empowered safety culture

All of these improvements in the Tex Mex service area will be consistent with the mandate of the national Rail Transportation Policy “to promote a safe...rail transportation system.” 49 U.S.C.A. § 10101(3). The Applicant’s commitment to the Responsible® Partnership will provide for a rail offering that is significantly stronger and sustainable in the areas of safety, health, and environmental performance.

**APPROVAL OF THE APPLICATION WILL PROVIDE A
STRENGTHENED PRO-COMPETITIVE RAIL SERVICE**

DuPont also believes that another aspect of the proposed transaction also offers an important reason for its approval. The KCS/Tex Mex combination will provide a pro-competitive rail improvement opportunity that will benefit both the railroad industry and its customers.

² See Letter dated July 29, 2003 filed with the Board by the Applicants.

DuPont strongly believes that robust rail-to-rail competition is a key component of the national Rail Transportation Policy. 49 U.S.C.A. § 10101(1). *See also Association of American Railroads v. STB*, 237 F.3d 676, 680-81 (D.C. Cir. 2001). It has been demonstrated time and again that rail competition drives carrier efficiencies and innovation. Rail competition consistently results in a significantly improved carrier offering and fuels growth. The lessons of competitive rail markets as diverse as Powder River coal and intermodal trailers and containers are clear: competition works. DuPont believes railroad and customer benefits can be derived from robust competitive offerings across diverse rail markets; including a USA rail market that is defined by movements to and from the Mexican border.

DuPont believes placing KCS and Tex Mex under common control will result in a stronger and more pro-competitive rail offering to and from the border. DuPont believes that the end-to-end nature of the proposed transaction and the absence of any two-to-one locations, stations, points, and corridors are significant. Also significant is the KCS commitment to abide by all existing agreements governing operations over the Laredo Bridge and to keep the Laredo gateway open on commercially reasonable terms. *See* Supplemental Application filed June 23, 2003 at 24-27.

DuPont believes that while the minimal, cross-border, market position currently enjoyed by KCS and Tex Mex at Laredo has the potential to grow, it will be subject to very keen competition. This competition will be in the form of alternative carriers in both the U.S. and Mexico, alternative Texas border crossings (Brownsville, Eagle Pass, El Paso), and alternative truck and marine options. DuPont believes competition to and

from Laredo is not likely to be diminished by the common control of KCS and Tex Mex, but rather enhanced by the proposed transaction.

DuPont is also very encouraged that KCS believes common control will facilitate Federal Railroad Administration approval of the Tex Mex's application for Railroad Rehabilitation and Improvement Financing loan. Haverty V.S., Application, KCS-3/TM-3 at 63-64. This loan will improve the existing Tex Mex infrastructure and provide improvements in service frequency and reliability enhancements.

Furthermore, DuPont believes that the prospect of a KCS and Tex Mex common control will increase the probability that service would be restored on the line between Victoria and Rosenberg, TX, would also be pro-competitive. The Applicants expectation that this will be the next major capital project on the Tex Mex (after common control and resolution of ownership disputes) is notable. Restoration of this line will result in a KCS-Tex Mex offering that is more competitive based on greater operating control and a significant reduction in reliance on trackage rights on competing rail lines.

CONCLUSION

In conclusion, DuPont believes that KCS and Tex Mex have proposed a transaction that will result in a more efficient, effective, safe, and competitive rail transportation service. DuPont believes approval of this minor transaction will benefit the rail industry and its customers as well as the public. DuPont urges the Board to promptly consider and grant this Application

Respectfully submitted,

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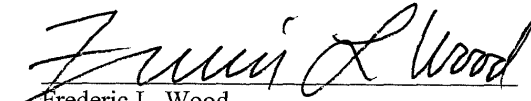
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*Attorneys for E. I. du Pont de Nemours and
Company*

Dated: August 4, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of August, 2003, served a copy of
the foregoing Comments upon all parties of record, via first-class mail, in accordance
with the Rules of Practice and the requirements of Decision No. 2.


Frederic L. Wood