

**Before the
Surface Transportation Board
Washington, D.C.**

	)	
Kansas City Southern -- Control -- The Kansas City	)	
Southern Railway Company, Gateway Eastern	)	Finance Docket No. 34342
Railway Company, and The Texas Mexican	)	
Railway Company	)	
	)	

**Comments of the
United States Department of Transportation
On Reinstatement of the Procedural Schedule**

Introduction

The Surface Transportation Board (“STB” or “Board”) in this proceeding has before it the application of the Kansas City Southern Railway Company (“KCS”) to acquire the Texas Mexican Railway Company (“Tex-Mex”).¹ After the submission of briefs roughly one year ago the STB suspended the procedural schedule when it became apparent that KCS was no longer in position to consummate this transaction in the event of regulatory approval.² Decision No. 10, served October 8, 2003. The Board indicated it would reinstate the procedural schedule if and when KCS could demonstrate “a reasonable likelihood” that it would be able to acquire control of Tex-Mex. *Id.* at 3.

^{1/} Technically, the application seeks approval for the joint control of KCS, the Gateway Eastern Railway Company (a wholly-owned subsidiary of KCS), and the Tex-Mex, via the purchase of a controlling interest in Mexrail, Inc., which owns 100 percent of Tex-Mex stock.

^{2/} The owner of Mexrail, Inc. repurchased the shares it had sold to KCS.

On August 16, KCS informed the STB that it had reached a new agreement to purchase a controlling interest in Tex-Mex.³ KCS has accordingly requested reinstatement of the procedural schedule. Moreover, because there are assertedly no meaningful changes in this acquisition that would give rise to a need for new evidence or analysis under applicable law, KCS seeks the expeditious issuance of a final decision. If the Board is not inclined to proceed forthwith to final judgment, KCS does not object to “a short time period” for the submission of comments and replies by interested parties.

The Department’s Position

The United States Department of Transportation (“Department” or “DOT”) urges the Board to invite parties to submit comments and reply comments within a reasonable period. This would allow parties time to consider whether changes in the new purchase agreement or other factors warrant new evidence or analysis, and to provide support for their views.⁴

There is not only a new agreement in place that deserves thorough consideration, but it is possible that other relevant circumstances have changed in the twelve months since the initial purchase agreement was effectively revoked. In addition, although there may now be no agreement in place, apparently KCS is still attempting to pursue its original plan to purchase a major Mexican railroad (“TFM”). That transaction garnered much of the attention in the prior phase of this proceeding, and the record is replete with

^{3/} Among other things, the new agreement reportedly does not allow for the repurchase of Mexrail, Inc. stock.

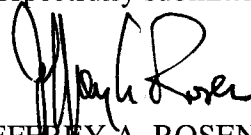
^{4/} The STB should also be aware that due to the suspension of this proceeding further progress on the Safety Integration Plan (“SIP”) prepared by KCS was also deferred. KCS has now informed the Federal Railroad Administration (“FRA”) that it has resumed work on the SIP in this case. FRA looks forward to working with KCS toward a final approval of the SIP.

evidence and argument about its implications and the proper STB response. The prospect that this transaction, too, may yet be revived and lead to the formation of the originally envisioned "NAFTA Rail" also militates in favor of comment and replies by interested parties.

Conclusion

For the foregoing reasons, the Department recommends that the STB establish a procedural schedule allotting thirty days for comments and fifteen days for reply comments.

Respectfully submitted,

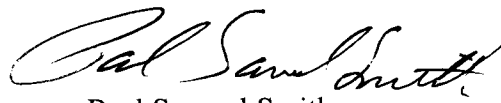
A handwritten signature in black ink, appearing to read "Jeffrey A. Rosen", is written over the printed name.

JEFFREY A. ROSEN
General Counsel

August 27, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a copy of the Comments of the United States Department of Transportation on Reinstatement of the Procedural Schedule in Finance Docket No. 34342 to be served by first class mail, postage prepaid, upon all Parties of Record in this proceeding.


Paul Samuel Smith

August 27, 2004