

FINANCE-30400

(SUB NO. 19)

3392

SERVICE DATE

AUG 20 1984

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INTERSTATE COMMERCE COMMISSION

DECISION NO. 16

Finance Docket No. 30400 (Sub-No. 19)

TEXAS MEXICAN RAILWAY COMPANY - TRackage RIGHTS OVER SOUTHERN
PACIFIC TRANSPORTATION COMPANY BETWEEN CORPUS CHRISTI AND
SAN ANTONIO, TEXAS

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted in part for consideration
subject to a condition, and rejected in part.

SUMMARY The Commission is accepting for consideration the
application of the Texas Mexican Railway Company (TM)
for trackage rights over the Southern Pacific
Transportation Company (SPT) and Missouri Pacific
Railroad Company (MP) between Corpus Christi and San
Antonio, TX, subject to the condition that an
agreement is reached with MP to permit operation
between Sinton and Corpus Christi, TX. Request to
direct responsive applicant MP to provide trackage
rights over its line between Laredo and San Antonio,
TX, is rejected. The accepted application has been
filed as a proposed condition to possible approval of
the application by which Santa Fe Southern Pacific
Corporation (SFSP) seeks to acquire control over SPT.

DATES: Written comments must be filed with the Interstate
Commerce Commission by October 1, 1984. Oral hearing
in this consolidated proceeding will begin October 1,
1984.

FOR FURTHER INFORMATION CONTACT:

Ellen A. Goldstein
(202) 275-7969

ADDRESSES:

An original and 10 copies of all comments referring to
Finance Docket No. 30400 (Sub-No. 19) should be filed with:

Office of the Secretary
Case Control Branch
Interstate Commerce Commission
Washington, D.C. 20423

One copy of all comments should also be sent to:

Rail Section
Room 5417
Interstate Commerce Commission
Washington, DC 20423

SUPPLEMENTAL INFORMATION:

TM is a class II regional railway operating solely within
the State of Texas, operating primarily between Laredo and
Corpus Christi.

On July 20, 1984, TM filed this responsive application as
proposed conditions to the applications in Finance Docket No.
30400, and embraced cases, where SFSP seeks authority to
acquire control of SPT, to merge SPT and ATSF to form SPSF,
and for related transactions. Notice of the acceptance of

those applications was published in the Federal Register on April 20, 1984, at 49 Fed. Reg. 16881.

By statute and regulation, responsive applications were due to be filed July 19, 1984. [49 U.S.C. 11345(b)(2); 49 C.F.R. 1180.4(d)(4).] We granted TM an extension of time to complete its application by September 10th (decision served July 23, 1984). Supporting information must be filed by that date.

A summary of the application follows:

(a) TM seeks trackage rights over SPT between San Antonio and Sinton, TX, a distance of 124.2 miles, and over the MP between MP mile post 150 at Corpus Christi, TX, and MP mile post 162 at Sinton, a distance of 12 miles, and the related use of terminal facilities; or in the alternative,

(b) TM seeks trackage rights over MP between Laredo and San Antonio, a distance of 154 miles, and the related use of terminal facilities.

In support of its application, TM states that unconditional approval of the primary application would provide SFSP with control of all international rail gateways with Mexico except the one at Laredo, TX. TM states that its request for trackage rights will help preserve the competitiveness of this gateway.

TM requests trackage rights between Laredo and San Antonio only if it is unable to obtain trackage rights between San Antonio and Corpus Christi. Each of the alternative requests involves operation over MP lines. Responsive applications are directed only toward a primary applicant, and seek affirmative relief either as a condition to or in lieu of the approval of the primary application. 49 C.F.R. 1180.3(h). With the exception of authority to require terminal facilities of one carrier to be used by another carrier, this Commission has no jurisdiction in a consolidation proceeding to impose conditions on a carrier that is not a primary applicant.

With respect to its principal request, trackage rights from San Antonio to Corpus Christi, TM seeks trackage rights over a segment of SPT line and a segment of MP line that SPT uses to reach its terminal facilities at Corpus Christi. TM is of the opinion that MP may allow it access over the line between Sinton and Corpus Christi. Because use of trackage rights over the SPT line between San Antonio and Sinton is integrally related to TM gaining trackage rights over this MP segment, we will accept the San Antonio-Corpus Christi trackage rights portion of the application on condition that TM file with the Commission, and with all parties of record in this proceeding, an agreement or statement of intent to enter into such an agreement with MP, for operations over the MP Sinton-Corpus Christi trackage, or that TM otherwise assert a basis for the Commission to impose trackage rights over this line. In addition, we will require TM to describe the MP segment more accurately. By indicating only that it seeks trackage rights to milepost 150 at Corpus Christi, it fails to describe what, if any, trackage it seeks to operate over beyond that point and how the segment connects with terminal facilities used by SPT. We will require TM to provide a schematic of the track arrangements at Corpus Christi indicating appropriate mileposts and showing connections with carriers. These filings must be made by September 10th.

With regard to the alternative request, TM seeks trackage rights solely over MP line. It asserts no basis for Commission jurisdiction to grant them, no expectation of MP's willingness to sign an agreement allowing TM operation over the line, and no relationship between this line and any line of the primary applicants. This portion of the application will be rejected.

The application and exhibits are available for public inspection in the Public Docket Room at the Office of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained from applicant's representatives upon request. Interested persons should request copies of exhibits due September 10th from applicants' representatives, so their comments may reflect the later filed information.

The application is consolidated for disposition with the applications in Finance Docket No. 30400, et al. Those applications are the subject of oral hearings conducted by Administrative Law Judge Hopkins, commencing October 1, 1984. By statute, the evidentiary phase of these proceedings must end by April 20, 1986. Service of an initial decision will be waived, and determination of the merits of the applications will be made in the first instance by the entire Commission. 49 U.S.C. 11345.

Participation in the Proceeding: Comments. Interested persons may participate formally by submitting written comments regarding the application. Comments should indicate the exact proceeding designation, and an original and 10 copies should be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, no later than October 1, 1984. One copy should also be sent to the Rail Section, Room 5417, Interstate Commerce Commission, Washington, DC 20423. Comments shall include the following: the person's position in support of or in protest to the proposed transaction, and the specific reasons why approval would or would not be in the public interest. See 49 C.F.R. 1180.(d)(1). Interested persons who do not intend to participate formally in the proceeding but who desire to comment may file statements, subject to the filing and service requirements specified below. Persons must state specifically whether they intend to participate actively in the oral hearings on the application or whether they wish only to be advised of all decisions issued by the Commission in this proceeding. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Written comments shall be concurrently served by first-class mail on the Secretary of the Department of Transportation, on the Attorney General of the United States, and on

(1) Applicant's representatives:

Mr. A. R. Ramos
Chairman of the Board
The Texas Mexican Railway
1200 Washington Street
Laredo, TX 78040

and

Charles H. White, Jr.
Arnall, Golden & Gregory
1000 Potomac Street, N.W.,
Suite 501
Washington, D.C. 20007

and on representatives of primary applicants SPT and ATSF:

R. K. Knowlton
Vice President-Law
Santa Fe Southern Pacific Corp.
224 South Michigan Ave.
Chicago, IL 60604

Milton E. Nelson, Jr.
General Counsel
The Atchison, Topeka and
Santa Fe Railway Co.
224 South Michigan Ave.
Chicago, IL 60604

and

Douglas E. Stephenson
General Attorney
Southern Pacific Transportation Co.
One Market Plaza
San Francisco, CA 94105

Within 10 days of the filing of written comments with the Commission, comments must also be served, by first class mail, on all persons designated active parties of record on the Commission's revised service list, which will be served shortly.

Responsive Applications. Because this application contains proposed conditions to approval of the applications in Finance Docket No. 30400, et al., the Commission will entertain no requests for affirmative relief to this proposal. Parties may only participate in direct support of or direct opposition to the TM application as filed.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. That portion of the application in Finance Docket No. 30400 (Sub-No. 19) relating to trackage rights between San Antonio and Corpus Christi, TX, is accepted for consideration subject to the condition that it be completed by September 10, 1984.
2. That portion of the application requesting trackage rights over MP lines between Laredo and San Antonio, TX, is rejected.
3. The parties shall comply with all provisions stated above.
4. The decision is effective on the date served.

Decided: August 15, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

Kathleen M. King
Acting Secretary

(SEAL)