

FD 30400

3892

SERVICE DATE

JAN 16 1986

EC

INTERSTATE COMMERCE COMMISSION

DECISION No. 22

Finance Docket NO. 30400¹/₁

SANTA FE SOUTHERN PACIFIC CORPORATION - CONTROL - SOUTHERN
PACIFIC TRANSPORTATION COMPANY

Decided: December 26, 1985

By motion filed November 18, 1985, Santa Fe Southern Pacific Corporation, the Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Transportation Company (collectively applicants) request a protective order to enable them to engage in certain pre-merger planning activities to ensure that the proposed merger, if approved and consummated, will be implemented promptly and efficiently. Applicants assert that such pre-merger planning will result in savings of around \$10 million in operating expenses and will advance by more than four months their planned service and marketing changes. The Missouri-Kansas-Texas Railroad Company, Kansas City Southern Railway Company, the United States Department of Justice, and Denver and Rio Grande Western Railroad Company replied in opposition to applicants' request.

In order to implement this advance planning, applicants propose to use a traffic team to integrate their marketing activities and an accounting and information systems team to develop a combined computerized waybill system. Confidential shipper information and other sensitive marketing and policy information would be available to both teams.

Applicants have proposed a detailed mechanism to protect the confidential and sensitive information from being used improperly. The mechanism seeks to ensure that team members cannot use the information they acquire in an anticompetitive manner, or in such a way as to violate the terms of the voting trust agreement or the Interstate Commerce Act, 49 U.S.C. 11343 or 11910, during the planning process or subsequently if the merger is disapproved or not consummated.

While we recognize applicants' interest in implementing their merger promptly, if approved, we conclude that the risks of an abuse of confidential and sensitive information to lessen competition, deliberate or inadvertent, outweigh the benefits to the public of the alleged savings of resources. While we grant similar requests in certain circumstances, for example when parties intend to file an application and must consult with one another to do so, the benefits anticipated by applicants here are outweighed by potential anticompetitive effects. We will therefore deny applicants' request at this time. If the Commission approves the consolidation, the applicant may submit a similar request prior to consummation.

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

¹/₁ Embraces Finance Docket No. 30400 (Sub-Nos. 1-20) and MC-F 15628.

It is ordered:

1. The request of applicants for a protective order is denied.
2. This decision is effective on the date of service.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioner Andre dissented. Commissioners Taylor and Strenio did not participate.

(SEAL)

James H. Bayne
Secretary