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March 6, 2000

Office of the Secretary
Surface Transportation Board
The Mercury Building
1925 K Street N.W.
Washington, DC 20423

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ATTN: Vernon A. Williams

Washington, D.C.

Pittsburgh

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Westmont, NJ

RE: Hearing on Public Views on Major Rail Consolidations,
STB Ex Parte No. 582

Dear Sir:

Enclosed for filing please find the original and ten (10) copies of the AMENDED STATEMENT OF CEMEX USA HOUSTON, TEXAS, REGARDING PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS. Also enclosed is a 3.5-inch IBM-compatible floppy diskette with an electronic copy of the Amended Statement saved in WordPerfect 5.1 as well as text format.

This Amended Statement is being filed to replace the Statement that Cemex filed with this Board on February 29, 2000. Thank you in advance for your consideration of Cemex USA's comments.

Respectfully,

Timi Nickerson Kenealy
Attorney for CEMEX USA

Enclosures

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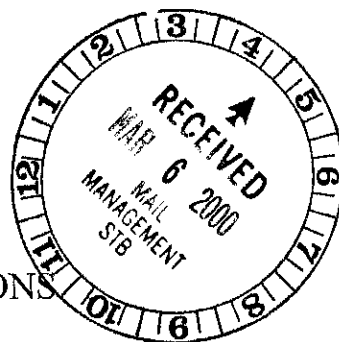
AMENDED STATEMENT OF
CEMEX USA
HOUSTON, TEXAS
REGARDING

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

STB Ex Parte No. 582

MARCH 6, 2000

(amending Statement Filed on 2/29/2000)



Cemex USA is one of the largest producers of cement and aggregate in Texas. Cemex USA is headquartered in Houston, Texas. Cemex USA has several cement and aggregate facilities in Texas, including a production plant located at Balcones, near New Braunfels, Texas. Cemex USA also imports cement from overseas sources through the Port of Houston.

Cemex USA moves the majority of its cement and aggregate to its customers by rail. Rail is the most efficient and economical method of moving bulk commodities across land. As a result, Cemex USA's entire marketing and distribution system is dependent on rail transportation.

Because of its dependency on rail transportation, Cemex USA is concerned about the move toward more consolidation in the rail industry. Cemex USA suffered greatly in 1997-98 during the rail crisis caused by the merger of the Union Pacific Rail Road ("Union Pacific") and the Southern Pacific Rail Road. It took well over a year for the rail service Cemex depended upon to return to normal.

With this experience, Cemex USA finds it difficult to believe that the interests of the American economy, let alone individual shippers, will be well served by any additional rail mergers. Increasing market share and reducing competition among the major rail carriers means that they will be free to disregard the letter and spirit of the law

to the detriment of individual shippers. History is replete with the examples of how monopolistic power squeezes out the rights of the consumer. Rail transportation service is no different.

For Cemex USA, this is not an abstract concern. Cemex USA currently is suffering from abuse of monopolistic powers at the hands of the Burlington Northern Santa Fe Railway Company ("BNSF"). Cemex USA's Balcones plant produces in excess of 1,000,000 standard tons ("ST") of cement a year. The overwhelming bulk of that cement is shipped by rail from the Balcones plant to customers in Texas, with approximately 40% destined to Cemex USA's Ft. Worth facility. That cement is loaded at the Balcones Plant and transported by the Union Pacific to a site outside of Ft. Worth where it is interchanged to the BNSF. BNSF then transports the cement into Ft. Worth. In 1999, BNSF transported approximately 300 cars a month, or 3987 cars, over this track to Cemex USA's Ft. Worth facility. BNSF received over \$500,000 in revenue for these shipments in that year.

Cemex USA's Ft. Worth facility is serviced over a BNSF-owned track approximately 1.6 miles (8,600 feet) long. Although Cemex USA shipments over this track have been and are projected to be substantial, and despite Cemex USA's annual fee payments in excess of a half million dollars each year, BNSF has conducted only minor maintenance and upgrading on the track since the Burlington Northern merged with the Atchison, Topeka and Santa Fe Railway to form BNSF in 1995. As a result, the track has substantially deteriorated. In 1999, two derailments occurred causing major disruptions to Cemex USA's operations. After making minor repairs where the derailments

occurred, the BNSF indicated in September 1999 that it intended to abandon the track unless Cemex USA purchases and rehabilitates the track to BNSF standards.

The BNSF made this “offer” asserting that the track was a “spur” and could be abandoned at will and without prior STB authorization. In January 2000, the BNSF provided Cemex USA with documents to complete the sale but could provide no firm support for its initial assertion that the track was a “spur.” Consequently, in a letter dated February 4, 2000, Cemex USA sought the guidance of the Surface Transportation Board (“Board”) regarding the status of the track.

On February 14, 2000, the Union Pacific advised Cemex USA that the BNSF had returned over 40 Cemex USA cars already interchanged to BNSF at Ft. Worth because the railcars were reportedly overweight. Cemex USA contacted BNSF and learned that BNSF had decided to limit railcar gross weight to 268,000 pounds per railcar instead of the previous 286,000 pounds. The BNSF, however, actually had rejected some cars that met the new weight limitation. The BNSF had embargoed the track as of February 3, 2000, without informing Cemex USA. Cemex USA informed the Board of these developments on February 16, 2000. After the STB had been notified, the BNSF finally allowed the approximately 100 railcars over the weight limit to be delivered to Ft. Worth on February 18, 2000.

On February 25, 2000, Cemex USA petitioned the Board for a Declaratory Order. Cemex USA asserted in its petition that: the BNSF’s actions constitute an unreasonable practice; the track is a line pursuant to 49 U.S.C. § 10903; the BNSF is required to file an application and provide notice of abandonment pursuant to 49 U.S.C. § 10903(a); and, in order for BNSF to effect a proper abandonment, BNSF must demonstrate that such

abandonment meets the criteria set forth in law and regulations. Cemex USA also requested the Board to direct the BNSF to cease its unlawful embargo and resume full service to the track.

Cemex USA contends that the current embargo of the track was implemented to provide strong-arm pressure to purchase the track. The timing of the embargo raises serious questions regarding the BNSF's motives, use of its monopolistic power, and undermines the parties' abilities to negotiate this matter in good faith. With the start of the construction season in Texas hard upon Cemex USA, and demand for its products about to reach a seasonal upturn, this embargo was meant to intimidate Cemex USA into signing an unfavorable purchase agreement that would require Cemex USA to operate a railroad and repair track that Cemex USA has been paying BNSF to maintain for years.

Embargoes and abandonment are powerful weapons that can be used against the livelihood of shippers. Railroads are compensated for maintenance and rehabilitation of tracks as part of the freight charges, either through service or interchange. BNSF, however, seeks to impose these costs on Cemex USA. Shippers should not be forced to acquire railroad tracks and their appurtenances by railroads that no longer want the responsibility for maintaining, repairing and upgrading tracks, but at the same time want to continue receiving freight rates. BNSF essentially is attempting to force one of its shippers to acquire track that BNSF has failed to maintain to its own engineering standards since 1995 and before.

It is opined from this situation that any additional rail mergers will make dealing with the major rail carriers much worse, not better. As a consequence, Cemex USA

does not support approval of rail mergers until the current carriers can adequately demonstrate that they are willing and able to serve the shippers they have today.

Thank you.