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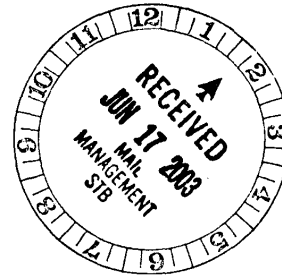
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June 17, 2003

BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
JUN 17 2003
Part of
Public Record



Re: Finance Docket No. 34342, Kansas City Southern – Control – The
Kansas City Southern Railway Company, Gateway Eastern Railway
Company, and The Texas Mexican Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter please find an original and 25 copies of Union Pacific Railroad Company's Petition for a Declaratory Order Regarding Control of Operations Over the Laredo Bridge ("UP-2"). I have also enclosed an electronic copy on a 3.5 inch disk in a format compatible with WordPerfect 10.0.

I have also enclosed an extra copy of the Petition to be date stamped and returned to our messenger.

Thank you for your attention.

Sincerely,

Michael L. Rosenthal

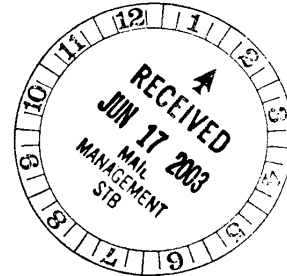
Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34342

KANSAS CITY SOUTHERN
– CONTROL –

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN
RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY



**UNION PACIFIC'S PETITION FOR A DECLARATORY ORDER
REGARDING CONTROL OF OPERATIONS OVER THE LAREDO BRIDGE**

Union Pacific Railroad Company ("Union Pacific") hereby requests that the Surface Transportation Board ("Board") issue an order declaring that Kansas City Southern ("KCS") may not, without prior Board approval, acquire operational control of the International Rail Bridge over the Rio Grande River at Laredo ("Laredo Bridge").

In their most recent pleading, Applicants criticize Union Pacific for publicly expressing concerns about the proposed transaction's effects on Laredo Bridge operations. *See* "Rebuttal to Comments Filed in Reply to Applicants' Petition to Establish Procedural Schedule" (KCS-6/TM-6) at 27 n.19. In an apparent attempt to discourage Union Pacific from continuing to bring its concerns before the Board, Applicants assert that KCS "does not need authority" to acquire control of the northern half of the Laredo Bridge and threatens to "exercise its right to acquire control of the bridge," thereby "taking over the operations" of the Laredo Bridge, "without waiting for STB approval of its application to acquire control of Tex Mex." *Id.* The Board should broadly condemn threats designed to discourage parties from raising concerns about the proposed transaction. It should address this particular threat

by declaring that KCS's proposed course is legally impermissible and that KCS may not acquire operational control of the Laredo Bridge without Board authority.¹

Applicants appear to believe that KCS can obtain control of the Laredo Bridge by exercising control of Mexrail, Inc. ("Mexrail"), if Mexrail's shares of The Texas Mexican Railway Company ("Tex Mex") are first placed into a voting trust. See KCS-6/TM-6 at 27 n.19. This belief is wrong for two reasons. First, KCS has already placed its Mexrail shares into a voting trust. See "Railroad Control Application" (KCS-3/TM-3) at 10. KCS may not, consistent with the voting trust arrangement, direct the trustee to place Mexrail's Tex Mex shares into a separate trust. See *id.*, Ex. 2A (Voting Trust Agreement). If Union Pacific is mistaken and the trust arrangement would allow KCS to exercise such influence over the trustee, Union Pacific believes that there would be grounds to investigate whether the Voting Trust Agreement complies with the Board's governing regulations and properly insulates Tex Mex from premature control by KCS. See 49 C.F.R. Part 1013.²

Second, whether or not KCS could acquire Mexrail's interest in the Laredo Bridge, it clearly cannot exercise operational control over the Laredo Bridge without Board authorization. Union Pacific's understanding is that Tex Mex – not Mexrail – controls the

¹ The Board has broad discretion in determining whether to issue a declaratory order to terminate a controversy or remove uncertainty. See *Delegation of Authority – Declaratory Order Proceedings*, 5 I.C.C.2d 675, 675-76 (1989).

² It is unclear whether KCS could have exercised control over Mexrail without Board approval if Mexrail's Tex Mex stock had been placed in a voting trust. The Applicants have asserted that Mexrail is not a carrier and that they are aware of "only one instance in which it has even been suggested that Mexrail is a carrier." KCS-3/TM-3 at 19 n.12 (citing *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1) (STB served June 11, 2001)). However, they overlooked the Board's decision awarding Mexrail compensation (in addition to that paid to Tex Mex) for Union Pacific's use of the Laredo Bridge. In deciding that case, the Board specifically described Mexrail as a "carrier." *Mexrail, Inc., v. Union Pacific R.R.*, STB Finance Docket No. 32980 (STB Decision served July 13, 2000) at 5 n.9 ("Here, Mexrail is a carrier . . .").

operations of the northern half of the Laredo Bridge. According to the Applicants, Mexrail is a “non-carrier” that owns “the U.S. portion of the bridge structure (but not the rail or associated track materials).” KCS-3/TM-3 at 10 n.1. Tex Mex owns the rail and associated track materials and conducts railroad operations over the northern half of Laredo Bridge. *See Mexrail, Inc., v. Union Pacific R.R.*, STB Finance Docket No. 32980 (STB Decision served July 13, 2000) at 2. Thus, KCS could not exercise control of bridge operations without first obtaining Board approval to control Tex Mex. However, if Union Pacific is incorrect and Mexrail *can* influence rail operations on the Laredo Bridge, KCS still could not assume whatever operational control Mexrail might have without Board authority. Reaching this conclusion does not require a thorough inquiry into the particular factual circumstances, or a sophisticated analysis of whether in light of those facts KCS would be unlawfully exercising control over Mexrail or indirect control over Tex Mex, or whether KCS would be unlawfully operating the Mexrail and/or Tex Mex line over Laredo Bridge. *See* 49 U.S.C. §§ 11323(a)(5), 10901(a)(4). Whichever of these alternatives were borne out by the facts, KCS would be equally unable to obtain the right to control rail operations over the northern half of the Laredo Bridge without first obtaining the Board’s approval.

CONCLUSION

The Board should condemn the Applicants’ efforts to intimidate parties from expressing their concerns to the Board, and it should specifically reject Applicants’ assertion that KCS could obtain operational control of Laredo Bridge without Board approval.

Respectfully submitted,

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June 17, 2003

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, hereby certify that on this 17th day of June, 2003, I caused a copy of Union Pacific's Petition for a Declaratory Order Regarding Control of Operations Over the Laredo Bridge ("UP-2") to be served by hand on:

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Sandra L. Brown
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Richard H. Streeter
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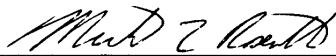
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Department of Justice
Washington, D.C. 20530

and by first-class mail, postage prepaid or by a more expeditious manner of delivery on all other parties of record in Finance Docket No. 34342.



Michael L. Rosenthal