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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

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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 Reply to Canadian National's Petition to Reopen Decision No. 2 ("UP-4"). 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,

Christopher Oatway

Christopher D. Oatway

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Enclosure

cc: Parties of Record

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UP-4

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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 RAILROAD COMPANY'S REPLY TO
CANADIAN NATIONAL'S PETITION TO REOPEN DECISION NO. 2**

Union Pacific Railroad Company ("UP") agrees with the conclusion of Canadian National Railway ("CN") in its Petition to Reopen Decision No. 2 (CN-3) that the Applicants' Supplement (KCS-10/TM-10), filed on June 23, 2003, failed meaningfully to comply with Decision No. 2. That order instructed Applicants to supplement their application to "reflect the implications of the broader transaction [including TFM] for competition within the U.S." and, in particular, to "submit the information specified in 49 C.F.R. §§ 1180.1(k)(1) and 1180.11." Decision No. 2, p. 11.¹

CN's Petition correctly notes numerous respects in which Applicants' Supplement falls short of any reasonable effort to comply with the Board's order, and UP will not repeat CN's points. From UP's perspective, the most troubling aspect of the Supplement is Applicants' failure to submit *any* analysis of perhaps the central issue in this

¹ See also *id.* at 21, Appendix A (requiring "supplementation of the KCS/TM application to reflect the implications of KCS/TM common control on the KCS/TM transaction and on competition within the U.S.").

case: to what extent, and for what reasons, will KCS control of TFM lead to shifts of U.S.-Mexico rail traffic from UP-TFM routes via the vital Laredo Gateway to routes involving Tex Mex and/or KCS?

The answer to this question is a basic building block in any assessment of the competitive effects of this transaction. UP recognizes that end-to-end railroad mergers can in many circumstances facilitate efficiency improvements that lead to *pro-competitive* traffic shifts. If this transaction might achieve such efficiencies, UP has no desire to interpose regulatory obstacles to KCS/Tex Mex/TFM exploiting those benefits to attract additional traffic to their single-system routes. However, the circumstances of this case pose unusually acute dangers that KCS control of TFM (in conjunction with its control of Tex Mex) will lead to traffic shifts for *anticompetitive* reasons. If KCS/Tex Mex/TFM are free to tilt the competitive playing field in favor of TFM-Tex Mex and/or TFM-Tex Mex-KCS routes by discontinuing TFM's cooperation with UP, constricting UP's access to the Laredo Bridge, or imposing additional cost (or rate) penalties on shippers' choices of efficient UP-TFM routes, rail shippers and the competitive process will suffer.

UP will address these competitive issues in depth in its Comments in this case. For present purposes the important point is that the extent to which KCS control of TFM will lead to such shifts is central to understanding the "implications of KCS/TFM common control on the KCS/TM transaction and on competition within the U.S." Decision No. 2, p. 21 (App. A).

In their Supplement, Applicants decline to address this crucial issue. Although the KCS-Tex Mex application analyzed the extent to which the Tex Mex acquisition, standing alone, would divert rail traffic from UP-TFM (and other) routes to the

KCS-Tex Mex system (*see* Application, p. 24 & Mutén V.S., pp. 118-29), the Supplement contains no similar analysis of KCS control of TFM.

Applicants attempt to justify this omission by claiming that KCS did not prepare any “diversion studies, competitive analyses,” or other “types of analyses often performed for major U.S. mergers.” Supplement, Davies V.S., p. 3; Supplement, p. 9. Instead, Applicants state that KCS proceeded with the TFM transaction based on a “static” financial model that assumed no shifts in traffic from other railroads to KCS and/or Tex Mex routes. *Id.* But that is no excuse. The fact that KCS may not have performed such analyses for *business* reasons does not justify its failure to perform them for purposes of this proceeding. Every merger applicant is required to take the basic step of studying the effects of its proposed transaction and presenting the results of that study to the Board and interested parties. And the Board specifically told Applicants to provide such an analysis in this case. Applicants surely *could* have performed such an analysis – as they did with respect to KCS control of Tex Mex – but they chose not to.

Applicants also suggest that they anticipate that KCS control of TFM will not cause *any* shifts of traffic over and above those flowing from control of Tex Mex. *See, e.g.*, Supplement, Davies V.S., p. 16 (“full operational changes and impacts of the KCS/Tex Mex transaction have been fully addressed and set forth in the Application and will not change if and when the KCS/TFM transaction occurs”); *id.* at 17 (TFM control will not have “any operational impacts within the United States”). This position is not credible and is plainly incorrect. In several contexts outside this proceeding KCS has stated that acquiring control of TFM will allow it to shift much of TFM’s U.S.-Mexico traffic to Tex Mex/KCS routes. For example, KCS’s Chairman, Mr. Haverty, told securities analysts on April 29 that the

combined KCS-TFM system will have “a lot of influence o[n] traffic that moves between Mexico and the United States,” and would thereby “draw more traffic to the combined system.” KCS Presentation to Analysts, April 29, 2003, Tr. at 12, 20, (Exhibit A hereto). KCS will be “looking to lengthen the [existing TFM] haul” for “as much traffic . . . as we can.” *Id.* at 10 (Exh. A).² Similarly, KCS’s website contains a summary of the KCS-Tex Mex-TFM transaction that describes its “strategic rationale” as including the aim of “lengthen[ing] hauls through an ‘across-the-border’ view.”³ It is equally clear that the Tex Mex diversion analysis submitted with the Application did not purport to address any of the additional traffic shifts that would be occasioned by KCS’s control of TFM in addition to Tex Mex. To the contrary, that study expressly assumed that the Tex Mex transaction would occur in isolation without any change in control of TFM.⁴

Although UP was aware of the deficiencies in Applicants’ Supplement, UP had hoped that it could ameliorate them to some extent through discovery relating to the effects of the TFM transaction.⁵ Unfortunately, although UP (and other parties) sought information from Applicants concerning those effects, Applicants’ responses have been unsatisfactory. KCS has echoed its Supplement, stating that “KCS did not commission or

² Mr. Haverty declined to identify “just exactly what the revenue synergies are” – *i.e.*, the traffic diversions and increases in revenue on existing traffic that KCS expects – because (as repeated in the Supplement) KCS had based its initial financial analysis of the transaction on a static analysis. *Id.* at 20 (Exh. A). Nevertheless, Mr. Haverty made quite clear that KCS in fact did anticipate such gains.

³ See www.kcsi.com/pdf/nafta_rail.pdf, p. 4 (excerpts at Exhibit B hereto).

⁴ Application, Mutén V.S., p. 119. Mr. Mutén expressly assumed that, apart from KCS’s control of Tex Mex alone, “no other changes in the railroad system structure, ownership, or cooperative arrangements occur.” *Id.*

⁵ UP was also reluctant to divert energies to additional procedural matters.

perform any diversion studies with respect to the TFM transaction or rely upon such studies when it decided to pursue the transaction.”⁶

The inadequacies of Applicants’ Supplement – especially their failure to study the effects of KCS’s acquisition of control of TFM and present that analysis to the Board – are inexplicable in light of the straightforward instructions provided by Decision No. 2. Applicants’ non-compliance compels UP to join CN in suggesting that the Board seriously consider whether this case should proceed.

UP believes that the important information omitted from Applicants’ Supplement would allow for a more effective appraisal of the merits of the proposed transaction. Parties should have the opportunity to comment on the transaction *as it will actually be implemented* – e.g., taking account of KCS’s (and TFM’s) expectations about the traffic shifts that will flow from KCS’s acquisition of control of TFM, and also taking account of the full measure of the commitments KCS made on the record in the

⁶ Letter from William A. Mullins to Michael L. Rosenthal, July 14, 2003 (Exhibit C hereto).

UP also requested that KCS produce any analyses performed by TFM – to which KCS has access by virtue of TFM’s contractual undertakings (a) to cooperate with KCS in connection with this proceeding, *see* Stock Purchase Agreement, § 5.2 (Application, Exh. 2, p. 175) (Grupo TMM and TFM covenant to “cooperate with KCS ... to obtain approval from the STB for KCS to acquire control of TMX”); and (b) to give KCS extensive access to TFM data and documents, *see* Acquisition Agreement, § 7.3(a) (excerpts at Exhibit D hereto) (“the Parties and their respective Affiliates shall afford each other ... access ... to all properties of, and all Contracts, documents and information of or relating to the assets, liabilities, business, customers, employees, operations, personnel and other aspects of their respective businesses”). However, KCS has refused to produce any documents that are not in the possession of KCS or Tex Mex. *See* Mullins July 14 Letter (Exh. C).

Supplement.⁷ The Application and Supplement provide an unusually incomplete basis for the submission of comments by interested parties.

Perhaps equally important, Applicants' inadequate Supplement raises serious questions concerning the future conduct of Board proceedings and the future application of the Board's merger rules. If parties perceive that the Supplement constitutes an adequate response to the Board's order in Decision No. 2, or that future applicants can satisfy the Board's merger rules without bothering to study the effects of their proposed transaction, the precedent set by Applicants' conduct in this case will have far-reaching and unfortunate consequences.

⁷ UP has asked KCS to clarify those commitments in several important respects so that UP and other interested parties can assess the extent to which they might effectively ensure that the transaction does not have anticompetitive consequences. KCS has not responded to UP's request. *See* Letters from David L. Meyer to William A. Mullins, June 30, 2003 (Exhibit E hereto), and July 16, 2003 (Exhibit F hereto).

Respectfully submitted,

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July 17, 2003

CERTIFICATE OF SERVICE

I, Christopher D. Oatway, hereby certify that on this 17th day of July, 2003, I served a copy of Union Pacific's Reply to Canadian National's Petition to Reopen Decision No. 2 by hand on:

William A. Mullins
David C. Reeves
Baker & Miller PLLC
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Washington, DC 20005-2318

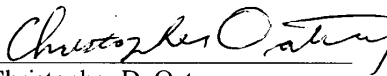
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and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all other parties of record in Finance Docket No. 34342.


Christopher D. Oatway

A

EVT 05:40 Final Event Transcript of KSU conference call, 29-Apr-03 1:00pm

Q1 2003 Kansas City Southern Earnings Conference Call

Boston, Apr 30, 2003 (CCBN StreetEvents) -- Event Transcript of Kansas City Southern conference call, 29-Apr-03 1:00pm ET.

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Corporate Participants

- * Michael Haverly
Kansas City Southern - Chairman President and Chief Executive Officer
- * Gerald Davies
Kansas City Southern - Executive Vice President and Chief Operating Officer
- * Ronald Russ
Kansas City Southern - Executive Vice President and Chief Financial Officer
- * Jim Jones
Manatt Phelps and Phillips - Board Member

Conference Call Participants

- * Jennifer Ritter
Lehman Brothers
- * Tom Waterditz
Bear Stearns
- * Orlando Mushan
Great T Capital
- * Arthur Shield
Roosevelt Investment Group

Presentation

Operator [1]

Good afternoon, my name is Amy, and I'll be your conference facilitator today. At this time, I'd like to welcome everyone to the Kansas City Southern 1st quarter earnings conference call. All lines have been placed on mute to prevent any background noise. If you should need assistance during the call, please press star then zero, and an operator will come back on line to assist you.

Thank you, I will now turn the call over to Mr. Michael Haverly, Chairman,

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the devaluation of the peso and inflation was \$6.7 million.

In terms of guidance the quarter, we are cautious in our view for the 2nd quarter and are monitoring the situation. But as usual, we are caveated that TFM's numbers are a bit of a wild card given the swings created by the peso and inflation on the deferred tax line.

We are cautiously optimistic about the 2nd half, with FCS fully imbedded and with good cost controls in the system, and with new movements of traffic coming online, there is potential to see improvement in our U.S. operations in the second half. With that, I'll throw it over to Mike.

Michael Haverty, Kansas City Southern - Chairman President and Chief Executive Officer [5]

Well, now, we'll turn to the second part of our presentation, and one of the things I forgot to do at the beginning of the first presentation was read the safe harbor message that I'm supposed to read at both of these, so I'll just combine the safe harbor for both.

These presentations include statements concerning potential future events involving the company which could materially differ from events that actually occur. The difference could be caused by a number of factors, including those factors identified in a current report of form 8K dated 12/11/ 2000, one filed by the company with the S.E.C., file number 1-4717. The company will not update any forward looking statements in the presentation to reflect future events or developments.

This presentation will cover our NAFTA Rail transaction. I will obviously be a speaker, Ron Russ will also cover part of this, and a little bit later in the program, we are going to ask Jim Jones, who is the former U.S. Ambassador to Mexico and a member of the Kansas City Southern Board to join us on the telephone from Mexico at the end of the presentation to give us his view on where we stand on the value added tax dispute that is ongoing in Mexico. So, he'll be on in just a few minutes.

Before I get started talking about the transaction, let me just say that we view this as a very, very exciting transaction, not only Kansas City Southern, but also for TMM. We cannot think of any strategic move that we could make at this point in time that would create more value for both the Kansas City Southern shareholders and the TMM shareholders. We have had a vision of a NAFTA Rail system for many, many years, and this is an opportunity to put this system together.

And as you hear in the presentation, you will understand that Mexico is clearly the greatest revenue producing opportunity in North America. It's proven to be that in the past, and we believe it's proved to be that in the future. We want to capitalize on that opportunity for both the shareholders of Kansas City Southern and TMM.

So, as we talk about the transaction, first of all, I think everyone understands that NAFTA Rail will replace the holding company name of Kansas City Southern. NAFTA Rail will purchase from group-O TMM 38.8% their ownership of TMM. In exchange for that, NAFTA rail will give to group OTMM 18 billion shares of NAFTA Rail stock, \$200 million in cash, plus, there's a potential incentive payment for TMM for \$100 to \$180 million dollars based on a favorable resolution of the tax dispute that is ongoing at this point in time in Mexico. And then, we will immediately pay to TFM \$32.7 million for its 51% of MEX-Rail, and we will put that in a blind trust pending approval of the Surface Transportation Board in the United States.

You cannot commonly control two railroads in the United States without Surface Transportation Board's approval, but we will move quickly to carry this transaction out and we will put in a blind trust. The structure of the company's next bill is pretty simple, as I said, NAFTA Rail will replace the Kansas City Southern Holding Company, and it will own all of Kansas City Southern Railway, it will own all of Tex-Mex Railway, and it will own about 86%, excuse me, 76% of TFM, the Mexican Government still owns about 24%. You can look at the map here and see Kansas City Southern and Tex-Mex and TFM on the map, and you can understand how they link together on an end-to-end-to-end type configuration.

We will keep the railroads independent, and the reason that we want to keep the companies independent is that we respect the rights of TFM to operate in Mexico, with Mexican employees and Mexican management manage the company on a day-to-day basis. The holding company will provide guidance, clearly on marketing aspects and utilization, financial advice, information technology and so on, but we understand that because of cultural differences and language differences it's important that we not try to put these companies together.

We also respect the historical significance of the Texas Mexican Railway that's been headquartered in Texas for well over 100 years, and we will keep that company independent and, of course, Kansas City Southern, that's been around since 1887 will be independent, but the entire network will work together as a single network cooperating very closely together.

The corporate governance and management of the company, I will be the Chairman of NAFTA Rail, Pepe Serrano, TFM, will be the Vice Chairman, and he will continue to be the Chairman of the TFM. The seven current Kansas City Southern Board members will be on the new NAFTA Rail board and also joining the Board will be the President of TMM, Javier Segovias. I will also be President and CEO of NAFTA Rail and at least for the time being, President and CEO of Kansas City Southern Railway, managed by TFM, Mario Mohar, who has been the CEO since the start of the company, will continue to be President and CEO of TFM.

The next slide, the strategic rationale for why we are doing what we're doing. Clearly, it is to enhance shareholder value by achieving consolidation of the rapidly expanding TFM affiliate in Mexico with the U.S. ownership. Not only do we have the growth in Mexico, but also, the opportunity to flow more traffic over the combined system which is going to add to the value of the new company.

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Also, we've got an increase in earnings per share that will result with the faster growing rail operations in Mexico, and I think it's important to understand -- and Ron will talk about this a little more, that this transaction is accretive from day one. It's a good move for our shareholders. Also, we intend to improve the Tex-Mex infrastructure and operations, that is the critical link between Kansas City Southern and TFM, we will work on that to improve that.

We want to strengthen the three railroads as the NAFTA railroads, we referred to ourselves for some time as the NAFTA railroads, we want to give the shippers that as they use the NAFTA trade corridor, a stronger transportation alternative, we'll be better as a single company, stronger as a single company than we were as three independent companies. And then also we are looking to lengthen the haul through across the border view. Instead of looking from Meridian to Beaumont and from Beaumont to Laredo, we'll be looking from Mexico City to Meridian, and Mexico City to Kansas City and different connections on the Kansas City Southern that lengthen the haul of as much traffic and improve service as we can through competitive service and rates.

Next, as we look at what it's going to take to complete the transaction, bank group consent to consummated, we announced last night that we have gotten that consent from our bank group, headed by J.P. Morgan and the approval was 93%. We also need the approval of TMM bond holders, we need approval of the share holders of both Kansas City Southern and TMM. In order to control two U.S. railroads as I said earlier, Tex-Mex and KCS, we have to have the U.S Surface Transportation Board Approval. Tex-Mex is a class II railroad, Kansas City Southern is a class I.

Ordinarily a transaction like this would not be considered a significant transaction. Clearly the transaction is end-to-end. There are no points on the railroad where you're going to go from two competitors to one, or even three competitors to two. It's clearly end to end and there's no overlap at all. So we feel that this will be approved and we hope that it's approved in an expedited manner.

We also need the approval of Mexico's competition commission. That's kind of like, as you may view in the United States, the Antitrust Division of the Department of Justice. And again, we don't see any competitive problems here. We think if anything, this will strengthen competition for Mexico so that there's not as much dominance as there is today.

Mexico's Foreign Investment Commission must also approve it under Mexican law, Mexican Company or Mexican National has to own controlling interest of the company, but over the last few years, there have been waivers to that law that have been pretty consistently given, Citibank taking over BaniMex is probably one of the primary examples, and there are many others, telecom companies taking control. There's several examples and we don't see a problem with this, there will still be 20% voting control in the hands of a Mexican company, and you'll have additional ownership beyond that, so there's going to be a significant

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position by Mexican shareholders in this company, and we intend to, as I say, operate TFM independently, so we don't see that this will be a major problem.

Next slide, why are we so excited about this opportunity, well, we were excited when we invested in Mexico back in 1997. We saw the opportunity for NAFTA coming, and it was not nearly as clear in 1996 as it was today. This shows that the U.S. trade with Mexico exceeds \$260 billion a year. It's four times what it was 10 years ago. Seventy-seven percent of the trade of Mexico goes to the United States and a few weeks ago if it's in Mexico, with a small meeting of businessmen with President Fox, and he talked about how Mexico purchases more from the United States than from England, France, Germany, Italy and Spain combined and Mexico will surpass Canada as the number one U.S. trade partner in the next eight years if we follow the current trends.

Eighty-five percent of Mexico's imports from the U.S. today are manufactured goods, in the past, that was primarily petroleum products and agricultural products. Now you have automobiles and many other types of manufacturing that is done, you have steel and so on moving into the United States, and Mexico is also developing from a low-cost assembly manufacturing area to a value added manufacturing area.

In the past I think some people looked at Mexico as just a low cost manufacturing point. I have talked to representatives of all three of the U.S. manufacturers of automobiles and they tell us that not only are their lowest cost vehicles produced in their entire worldwide network in Mexico, but also their highest quality, Mexican workers do an outstanding job, so it has a value-added aspect to it. Also, we think that Mexico is positioned because of its geographic location and its far-reaching free trade agreements could be an international manufacturing hub, not only from North America to the western hemisphere, but also for the world.

So, anybody that thinks that NAFTA has not been successful only needs to look at some of these numbers, and when you think about the opportunities going forward, this is a great railroad transportation opportunity and that is why we forward, this is a great railroad transportation opportunity and that is why we want to put these three companies together.

Now, do we have to go down to the United States, excuse me, down to Mexico and improve the railroads? No, that has already been done, since 1996 really we started operating in '97 although we began preparing for capital improvements as far back as 1996, we have put into the Mexican railroad all the things that you will find in the United States, centralized traffic control, the communication systems, the technology where we detect defects along the track, smaller crews, like you find in the United States, and so on.

In addition to that, the main railroad routes have been improved, we have installed welded rail, we have improved the car capacity over the Laredo bridge by three times by better operating practices, there have been over 150 new locomotives purchased for that railroad, 75 from G.E. and 75 from E.M.B., we put in new capacity and siding, there are 7 intermodal facilities down there to

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date, 5 of which are brand new and 70 transload facilities with 12 new facilities planned.

The next slide, if you just look at the revenue growth and just for clarification, '97 was only a five month period of when we took the railroad over, but you can see the kind of revenue growth and clearly there has been some of the flattening from 2000 through 2002, but that is because, again the U.S. economy has been sluggish and as a result of that, I showed you what the trade is between the two countries which clearly is going to affect Mexico.

But, if you look at the next slide, and you look at the revenue increases that have been enjoyed by the Mexican railroad compared to all of the U.S. class one railroads combined, between 1998 and 2000, clearly, TFM is the fastest growing revenue opportunity in North America.

The next slide shows what Kansas City Southern's growth has been since the investment back in 1997 in terms of the volume of traffic that is moving between Mexico and the United States and in the first quarter of this year we have experienced a 17% increase in the number of units going to or from Mexico compared to last year and obviously, when the three railroads are put together, we expect that number to go up substantially as we put more focus on taking advantage of better service and a better opportunity for single pricing from Mexico to the United States and vice versa, that will increase substantially.

The next slide, from an operations and marketing perspective, the three railroad companies will connect end to end so what we will do is design a system that looks not at the three individually, but we will schedule trains from origin to destination from Mexico to the United States and from the United States to Mexico. We will use a common computer system, our MCS system that we are planning on putting on Tex-Mex in September and then 1st quarter of next year, Mexico, and we will closely watch the movement across the border, we think we can improve that, we have already made a lot of improvement.

It will be seamless service, as I said, from Mexico to the heartland of the United States, we will have a common transportation service plan and schedules in place for cars that go from one country to another. The integrated customer service will be easier for customers to communicate with all companies in both countries and we will have through rates between Mexico and the United States and the United States to Mexico that will be easier for customers to understand. And you can see here that the combined resources will be much greater, 965 locomotives, 25,000 cars, and you can see some of the other things, also, we will have about \$1.3 billion in revenues which will make this company a stronger company.

True, we are still going to be the smallest company but we are going to have a lot of influence of traffic that moves between Mexico and the United States and we will certainly improve our financial situation longer term and continue to build our revenue base and become stronger per long term.

Now, TFM recently did a study in Mexico with 200 customers, 134 are those that

represented 70% of their current volume in revenue and then 66 potential customers and as you can see here, existing customers identified potential shift in business to TFM that could add as much as 40% to TFM's total volume over the next two years and the potential customers, the 66 identified conversion potentials that would add nearly 10% to TFM. And most of that, as you can see here in this pie chart, comes from trucking, about 73% of the total traffic, I think, shows that it would come from trucking.

Some of those that have been invested in us for some time or in TMM or TFM or KCS bonds may remember that we talked about the opportunities to convert from truck to rail at the time when we made the investment back in 1997. At that time, the railroad had gone down to 11% of the inner city market in Mexico and today, we are up at around 15 or 16%, but our objective was to get back to only 20%, if we felt we could get back to 20% of the inner city market we could justify our investment.

Well, as it's turned out, we have really justified our investment with far less market share and we have not converted over the last five years as much intermodal traffic from truck to rail as we had anticipated because what we did is concentrated on traditional rail traffic such as automobiles, auto parts, grains, steel, cement, appliances and different things. We intend to concentrate much more so on intermodal in the future and we are going to be able to provide certainly truck competitive service, we have got 7 intermodal facilities now, 5 of them are almost brand new and that is going to give us the opportunity to move forward in this truck conversion.

So, this map here just shows the location of these intermodal facilities, and as I said, 5 of those are brand new, if you look at the next map then, you can see how Kansas City Southern fits into the entire rail network in North America and I think you can see where Kansas City Southern, soon to be NAFTA Rail, will fit into the North American scheme.

So, from a strategic standpoint, this combined company could not be better positioned than it is right now, and I think all of us have recognized for a long time that the crown jewel system in Mexico has been Laredo to Mexico City. With that, I am now going to turn the call over to Ron Russ, and then we are going to ask Ambassador Jones to come on the phone here.

Ronald Russ, Kansas City Southern - Executive Vice President and Chief
Financial Officer [6]

Thanks again, Mike. I just want to take a moment to expand on a few points we made last week on our conference call and also bring everyone up to speed on where we are.

As Mike mentioned earlier, I want to focus a bit more on the process and approvals needed to complete the transaction. Mike showed a slide earlier of the approvals and the key constituents, now let us address each one in more detail. First, you saw our announcement last night, we have made good progress with our

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I think I may follow-up on that, the importance of what Ron has talked about, and the question you asked, Jennifer, is I think there's been kind of a misconception in the financing of this transaction that we raised the \$200 million, and then "bang" all of a sudden, we have to come up with \$500 million.

The fact is, as Ron as pointed out, you have until next February to come up with this. The VAT is still outstanding and does the Mexican government really want to exercise the put with this issue that's still outstanding. And I think that's an important issue.

So, anybody that has the misconception that is like "bang bang" we really have to raise \$700 million right away, that's not the case. We're taking it one step at a time. The 200 million first of which we already targeted really, the number is 120 that we have to raise, we can use stock for the other 80 million if we need to. The cash needs are not there hitting us in the face immediately. Next question, Tom?

Tom Waterditz, Bear Stearns [11]

Hi, it's Tom Waterditz from Bear Stearns. I have one question for you, Michael and two for Jim. Can you give us a sense of your view of how much political influence there is on this foreign investment commission, how much room there is for I guess meddling from other parties that might want to cause trouble. Just your opinion on that?

Michael Haverly, Kansas City Southern - Chairman President and Chief Executive Officer [12]

Jim, are you still on here? He may have had to go, he was actually down there for an Anheuser-Busch board meeting, and he may have had to go.

You know, I certainly don't have the expertise on that, I think our partner in Mexico has a lot of experience with that, and we depend upon his advice and I think what we can say best here, Tom, is that we have found the competition commission to be very fair, and not to be politically motivated. They look at a situation, and this is what our partners told us, and they determined whether or not they think it is competitive or anti-competitive, and they rule accordingly, and that it is not greatly politically influenced.

Tom Waterditz, Bear Stearns [13]

Okay. Maybe if I can -- two more for you, Michael, one of the opportunities seems to be taking some of the traffic away at Laredo that goes to either primarily UP, but also to Burlington, I guess Burlington would be through El Paso or Eagle Pass.

But to get some of that business, can you give us a sense of how you're going

□

to do that, given that UP does have a route structure advantage to say Chicago or other places, and maybe the magnitude of the revenue that you really think you can take from other railroads?

Michael Haverty, Kansas City Southern - Chairman President and Chief Executive Officer [14]

Let me clarify one thing. B&S does not go to Laredo and TFM does not go to El Paso. Where TFM interchanges with B&S is at Brownsville, which goes across the border point, and then also at Robbs town, which is located on Tex-Mex at the east end near Corpus Christi, and then UP operates at Laredo, but clearly UP is the dominant carrier through Laredo, and that's why we think that this offers one of the opportunities for shippers to look at more equally of spreading traffic between competitors and I know the railroad business well. We clearly are a competitor in certain markets with the UP.

I can give you an example of -- we were handling Volkswagen automobiles going to Nova Scotia, and competing with the UP in and transit time via Canadian national through Jackson was four days faster, so there are ways you can structure trains, schedules, planning and so on that can make our system competitive.

Are we going to close the gateways at Laredo and Brownsville? Absolutely not. Are UP and B&S, that's still going to be important connections, and U.S. partners for TFM, we plan for that to happen. And what we think is that over time with the new service that we can provide, when it's much more competitive, that we could draw more traffic to the combined system. And we will add more focus on pricing over the combined system.

But does that mean that we're going to take everybody else's business? Absolutely not. That's not going to happen. And I'm not going to identify at this point in time just exactly what the revenue synergies are, because what we've done is we've based this transaction not looking at synergies, and we are saying that it's accretive without synergies.

Tom Waterditz, Bear Stearns [15]

Second question? If I can sneak one last one in here. Can you give us a sense of what the basket is right now in terms of what can be paid dividends from TFM and over what time horizon do you think you can really begin to meaningfully exact cash, because they have a great operating ratio, great tax dividends, do you think at some point you could have a cash payout out of that or pay down debt?

Michael Haverty, Kansas City Southern - Chairman President and Chief Executive Officer [16]

B

NAFTA Rail



transaction summary

Strategic Rationale for NAFTA Rail

- Enhance shareholder value by achieving consolidation of rapidly expanding TFM affiliate in Mexico, with U.S. ownership
- Accretive from day one
- Improve Tex Mex infrastructure and operations to better link the Kansas City Southern Railway with TFM
- Strengthen KCSR/Tex Mex/TFM as the “NAFTA Railroad” in North America
- Increase EPS contribution from faster-growing rail operations in Mexico
- Lengthen hauls through an “across-the-border” view



C

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July 14, 2003

Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

Re: *Kansas City Southern - Control - The Kansas City Southern Railway Company, Gateway Eastern Railway Company, And The Texas Mexican Railway Company*; Finance Docket No. 34342

Michael:

This letter is in response to your letter of July 7, 2003 in which you have requested information concerning the status of Kansas City Southern, The Kansas City Southern Railway Company, and Gateway Eastern Railway Company's (collectively "KCS") production of documents in response to UP's multiple sets of discovery requests.

First, I would like to note that KCS provided timely responses and objections to UP's First and UP's Second set of Discovery Requests on June 5 and June 24 respectively. KCS has undertaken a thorough search for responsive documents for each of these sets of discovery requests and KCS has produced everything that it has found that is responsive and not subject to any objection stated in the respective general and specific responses to each request in the two sets of discovery requests. KCS is currently working on responding to UP's third set of discovery, which UP served on KCS on July 3, 2003, and as always, remains under an obligation to produce any newly discovered responsive documents to prior served discovery requests.

Second, with respect to the specific requests addressed in your July 7th letter, KCS responds generally by stating that KCS is a much smaller company than UP. Unlike UP, KCS does not have a large strategic planning department to conduct studies and make extensive plans for future events that may or may not occur. For example, KCS did not commission or perform any diversion studies with respect to the TFM transaction or rely upon such studies when it decided to pursue the transaction.

Third, in addition, you ask numerous times in your letter for KCS to identify documents that UP may have overlooked in the document depository. KCS is not sure what documents that UP may have overlooked in its review of the documents produced, even though copies of all documents produced to any party have been provided to UP as well. However, KCS refers UP to

Michael L. Rosenthal
July 14, 2003
Page 2

the index that KCS has continually updated to assist UP in looking for documents responsive to UP's requests.

Fourth, it may be that some documents that KCS will produce in response to UP's Third Set of Discovery requests may also be tangentially related to some of UP's First and Second Discovery request; however, with that caveat and with respect to UP's First Set of Discovery Requests, KCS responds specifically to the individual requests discussed in your letter as follows, subject to all general and specific objections and responses previously stated for these Requests:

Request No. 4 (traffic diversions). KCS has no additional documents that would be responsive to *Request No. 4*.

Request No. 7 (agreements that may not provide adequate revenues). KCS has not undertaken any study to determine whether any particular agreement may not provide adequate revenues to a combined KCSR/Tex Mex system. Although KCS has committed to not terminating any existing Tex Mex or TFM agreements until such agreements expire by their terms, KCS reserves the right, just as any other carrier would, to evaluate any agreement that Tex Mex or TFM has with any other carrier, including UP, BNSF, CN, CSX, or NS, to determine whether any agreement may not provide adequate revenues to a combined KCSR/Tex Mex or KCSR/Tex Mex/TFM system and to not renew that agreement once it is terminated under its terms. Other than listing the existing agreements, as set forth in the Application and the Supplement, and producing copies of those agreements, KCS has no documents responsive to *Request No. 7*.

Request No. 9 (marketing and operations of U.S.-Mexico rail traffic). KCS has produced over a thousand pages of documents responsive to this request. KCS has no additional documents that are responsive to *Request No. 9*.

Request No. 14 (Laredo Bridge operations). KCS has no additional documents that are responsive to *Request No. 14*.

Request No. 16 (effects of the transaction on the Laredo Bridge). KCS has no documents that are responsive to *Request No. 16*.

Fifth, with respect to your concern regarding Tex Mex documents, please note that counsel for Tex Mex will be responding in a separate letter to you.

Sixth, you raise an issue that has been the subject of numerous previously exchanged letters regarding documents in the possession of TFM or Grupo TMM. KCS does not believe it has an obligation to produce documents that are solely in the possession of TFM or Grupo TMM. Notwithstanding this fact, KCS has nonetheless produced TFM or Grupo TMM documents that were in KCS's possession, custody, or control and that were relevant to UP's requests, were not otherwise privileged, or subject to any other objection.

Seventh, with respect to Union Pacific's Second Set of Discovery Requests, most of these requests sought documents that were referenced in the 2002 Stock Purchase Agreement ("2002 SPA"), which by the way, is superseded by the Mexrail Stock Purchase Agreement and the TFM Acquisition Agreement. It appears that UP's primary concern is that it requested, by

Michael L. Rosenthal
July 14, 2003
Page 3

quotation, certain documents referenced in the 2002 SPA. KCS has performed, and is continuing to perform, a diligent search for any communications or documents responsive to UP's requests. Again, while some documents that KCS will produce in response to UP's Third Set of Discovery may relate to some of your requests in the Second Set, many of the items you reference and relate back to the 2002 SPA simply were never done, in large part due to Mr. Ab Rees leaving the company shortly after the 2002 SPA was executed. With these comments in mind, KCS has no documents that are responsive to *Requests Nos. 3, 4, 6, 7, 8, 9 and 10*.

Eighth, with respect to certain documents addressed in the third part of your letter, including Exhibit B to the Omnibus Agreement and files referenced in certain previously produced e-mails, KCS responds as follows, subject to all general and specific objections and responses previously stated for these Requests:

KCS will search again for Exhibit B to the Omnibus Agreement. KCS will also search for the files referenced in documents labeled KCS-HC 3694, 3696 and 3715. The files referenced in documents labeled KCS-HC 3724, 3726 and 3729 can be located at KCS-HC 3718 through KCS-HC 3723.

If you have any additional questions regarding discovery, you may contact me at 202-637-9499, ext. 13.

Sincerely,



William A. Mullins

cc: Richard Streeter
Allan Van Fleet, Esq. (by facsimile)

D

EX-10.25 8 a2106983zex-10_25.htm EXHIBIT 10.25
[QuickLinks](#) -- Click here to rapidly navigate through this document

Exhibit 10.25

ACQUISITION AGREEMENT

by and among

KANSAS CITY SOUTHERN,
a Delaware corporation,

KARA Sub, Inc.,
a Delaware corporation,

GRUPO TMM, S.A.,
a *sociedad anonima* organized under
the laws of the United Mexican States,

TMM HOLDINGS, S.A. de C.V.,
a *sociedad anonima de capital variable*
organized under the laws of the United Mexican States,

and
TMM MULTIMODAL, S.A. de C.V.,
a *sociedad anonima de capital variable*
organized under the laws of the United Mexican States

DATED AS OF APRIL 21, 2003

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ACQUISITION AGREEMENT, dated as of April , 2003 (this "Agreement"), by and among KANSAS CITY SOUTHERN, a Delaware corporation ("KCS"), KARA Sub, Inc., a Delaware corporation ("KARA Sub"), GRUPO TMM, S.A., a *sociedad anonima* organized under the laws of the United Mexican States ("UMS") ("TMM"), TMM HOLDINGS, S.A. de C.V., a *sociedad anonima de capital variable* organized under the laws of the UMS and a subsidiary of TMM ("TMMH") and TMM MULTIMODAL, S.A. de C.V., a *sociedad anonima de capital variable* organized under the laws of the UMS ("MM") and a subsidiary of TMMH (collectively, the "Parties").

WHEREAS, each of the Boards of Directors of KCS, TMM, TMMH and MM has approved and declared advisable the acquisition by KCS of all of MM's interest in GRUPO TRANSPORTACION FERROVIARIA MEXICANA, S.A. de C.V., a *sociedad anonima de capital variable* organized under the laws of the UMS ("GTFM") through (i) the purchase by KARA Sub from MM of all of the capital stock of GTFM held by MM (the "Stock Purchase"), (ii) the investment by MM in KARA Sub (the "Subsidiary Investment") and (iii) the merger of KARA Sub with and into KCS (the "Merger") upon the terms and subject to the conditions of this Agreement (collectively, the Stock Purchase, Subsidiary Investment and the Merger comprise the "Acquisition"); and

WHEREAS, certain of the Parties and other parties are entering into ancillary agreements (the "Ancillary Agreements," identified hereinafter) to carry out certain of the objectives of this Agreement and of the Acquisition.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1 STOCK PURCHASE

Section 1.1 Stock Purchase. Upon the terms and subject to satisfaction or waiver of the conditions set forth in Article 8, at the Closing, KARA Sub shall purchase, acquire and receive from MM, and MM shall sell, assign, transfer, convey and deliver to KARA Sub, all GTFM Shares held by MM, consisting of 25,500 shares of Series "A" fixed capital stock of GTFM and 3,842,901 shares of Series "A" variable capital stock of GTFM (collectively the "GTFM Shares"), for the consideration described in Section 1.2 (the "Stock Purchase Price").

Section 1.2 Stock Purchase Price. The Stock Purchase Price to be paid by KARA Sub to MM at the Closing for the purchase of the GTFM Shares shall be paid by the delivery of: (i) \$200 million, in immediately available funds, by wire transfer to the account designated by TMM to KCS at least three business days prior to the Closing Date (the "TMM Account"), provided, that KCS may, at its option, elect to pay up to \$80 million of such amount by delivering to MM a number of shares of KCS Common Stock, or of KCS Class A Common Stock determined by dividing the amount that KCS so elects to pay other than in cash by \$12.50 (such election to be made by written notice to the Sellers not less than 30 days prior to the Closing specifying the amount which KCS elects to pay through the delivery of Common Stock or Class A Common Stock and the class of such stock, which notice shall be irrevocable once given); and (ii) a subordinated promissory note evidencing an indebtedness of KARA Sub in the principal amount of \$25,000,000, having the terms and conditions set forth in the form of note attached hereto as Exhibit 1 (the "KARA Sub Note"). KCS covenants and agrees to provide KARA Sub with sufficient funds to make all payments required to be made by it under this Agreement.

ARTICLE 2 SUBSIDIARY INVESTMENT

Section 2.1 Subsidiary Investment. At the Closing, immediately following the Stock Purchase, MM shall subscribe for and purchase from KARA Sub 100 shares of KARA Sub common stock, \$.01 par value ("KARA Sub Common Stock"), representing 10% of the issued and outstanding shares of KARA Sub Common Stock, and KARA Sub shall issue, sell and transfer to MM the KARA Sub Common Stock in consideration for delivery by MM to KARA Sub of the KARA Sub Note.

ARTICLE 3 THE MERGER

Section 3.1 The Merger. Immediately following the Subsidiary Investment, KARA Sub shall be merged with and into KCS in accordance with the General Corporation Law of the State of Delaware ("Del. G.C.L."). KCS and KARA Sub shall cause the Merger to be consummated by filing a certificate of merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware, in such form as required by, and executed in accordance with the relevant provisions of, the Del. G.C.L. (the date and time of the filing of the Certificate of

(u) amend their charters or bylaws (or comparable organizational documents), or merge or consolidate with any other Person, subdivide or reclassify their common stock or other ownership interests, or change the rights of their common stock or other ownership interests or liquidate or dissolve;

(v) issue, sell or acquire any common stock or other ownership interest of any of the KCS Subsidiaries;

(w) make any loan or advance or capital contribution to any of their Affiliates (other than any KCS Subsidiary), or any of their officers, directors, employees, consultants, agents or other representatives (other in the ordinary course of business consistent with past practice;

(x) declare or make any dividends or declare or make any other distributions of any kind on or payable to the holders of its capital stock (other than regularly scheduled dividends payable on KCS preferred stock);

(y) acquire any equity interests in, or assets of any business of, any Person; or

(z) authorize or agree to do any of the foregoing.

(b) In connection with obtaining the funds necessary for the Purchase Price, KCS shall keep apprised on a current basis regarding any negotiations, and consult on a non-binding basis with, Javier Serrano Segovia concerning any KCS asset disposition and with Jacinto Marina Cortez concerning any Acquisition financing arrangements.

Section 7.3 Access to Information; Confidentiality.

(a) Between the date of this Agreement and the Closing Date, subject to Applicable Laws relating to the exchange and disclosure of information and to the Confidentiality Agreements, the Parties and their respective Affiliates shall afford to each other and to their respective authorized agents and representatives access, upon reasonable notice and during normal business hours, to all properties of, and all Contracts, documents and information of or relating to the assets, liabilities, business, customers, employees, operations, personnel and other aspects of their respective businesses; provided, however, that such access shall be conducted in a manner which does not unreasonably interfere with a Party's normal operations.

(b) The Parties agree to continue to be bound by and comply with the provisions set forth in the Confidentiality Agreements, and all amendments thereto, the provisions of which are hereby incorporated herein by reference, to the extent such provisions are not in conflict with the terms of this Agreement.

Section 7.4 Regulatory Matters; Governing Documents; Third-Party Consents.

(a) The Parties shall cooperate with each other and use their commercially reasonable efforts promptly to prepare and file all necessary documentation, to effect all applications, notices, petitions and filings, and to obtain as promptly as practicable all permits, consents, approvals, waivers and

authorizations of all Governmental Authorities, third parties and other Persons which are necessary or advisable to consummate the transactions contemplated by this Agreement and the Ancillary Agreements, and requests for required consents under the Contracts, including, without limitation, those referred to in Sections 5.5 and 6.3. KCS and Sellers agree to take all reasonable steps necessary to satisfy any conditions or requirements imposed by any Governmental Authority in connection with the consummation of the transactions contemplated by this Agreement, other than those conditions or requirements, in the aggregate, the satisfaction of which are reasonably likely to result in either a GTFM Material Adverse Effect, a KCS Material Adverse Effect or a Seller Material Adverse Effect. The Parties agree that they will consult with each other with respect to the obtaining of all permits, consents, approvals and authorizations of all Governmental Authorities, third parties and other Persons necessary or advisable to consummate the Merger and the other transactions contemplated by this Agreement and the Ancillary Agreements and each Party will keep the other Parties apprised of the status of matters relating to completion of the transactions contemplated herein and therein.

(b) The Parties shall promptly advise each other party hereto upon receiving any communication from any Governmental Authority whose consent or approval is required for consummation of the transactions contemplated by this Agreement or the Ancillary Agreements.

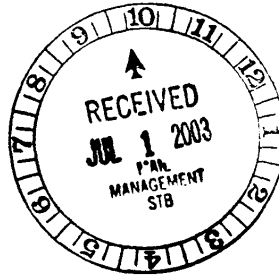
(c) Each Party will (i) take promptly all actions necessary to make the filings required of such Party or its Affiliates under the HSR Act (which filings shall include a request for the early termination of the waiting period under the HSR Act), (ii) comply at the earliest practicable date with any request for additional information received by such Party or its Affiliates from the Federal Trade Commission or the Antitrust

E

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June 30, 2003

BY FACSIMILE

William A. Mullins, Esq.
Troutman Sanders LLP
401 Ninth Street, NW, Suite 1000
Washington, D.C. 20004-2134

Re: Finance Docket No. 34342

Dear Bill:

In Applicants' Supplement to Application (KCS-10/TM-10), Kansas City Southern ("KCS") made several commitments aimed at resolving concerns about the potential effects of the KCS/Tex Mex/TFM transaction. Those commitments fall into four categories: KCS (1) will not "make any changes in the way the Laredo Bridge is dispatched and operated;" (2) "will continue to work with UP and BNSF;" (3) "will keep the Laredo Gateway open on commercially reasonable terms;" and (4) "will not cancel existing agreements prior to the end of their current term, even where it has the legal right to do so." KCS-10/TM-10, p. 4. If these commitments have sufficient substance and can be confirmed by enforceable agreements or conditions, Union Pacific would be able to support the Application. In order to assess the effectiveness of these commitments, Union Pacific requests that Applicants clarify their commitments in several respects.

A. Issues of General Applicability

Please clarify the following regarding each of KCS's commitments:

- (1) Are Applicants willing to accept these commitments as enforceable conditions to the Board's order approving this transaction?
- (2) Will the commitments bind NAFTA Rail, TFM, Tex Mex, Mexrail, and their successors and affiliates, if KCS acquires control of those entities?

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William A. Mullins, Esq
June 30, 2003
Page 2

B. The Laredo Bridge Commitment

KCS commits that "all carriers will be treated fairly at the Laredo Bridge" (KCS-10/TM-10, p. 26); that it will not "make any changes in the way the Laredo Bridge is dispatched and operated" (*id.*, p. 4); and that it will "abide by the existing dispatching and operating practices over the bridge that exist today" (*id.*, Davies V.S., p. 16).

Please clarify the following:

- (1) Does KCS/NAFTA Rail commit to work cooperatively with Union Pacific to maximize efficient utilization of the Bridge?
- (2) Does KCS/NAFTA Rail commit that Union Pacific is entitled to a share of the Laredo Bridge's total capacity and capacity within commercially significant time slots commensurate with Union Pacific's contemporaneous share of U.S.-Mexico rail traffic moving via the Laredo Gateway?
- (3) Does KCS/NAFTA Rail object to any of the provisions of the agreement proposed by Union Pacific in June to complement this commitment? If so, what are KCS's objections?

C. The "Continue to Work with UP" Commitment

KCS commits that the TFM transaction will "not alter the basic structure or operations of TFM" and that "TFM will continue to cooperate with UP and BNSF regarding pre-blocking rail cars, automated customs pre-clearance procedures, supplying cars, accommodating run-through train service, and promptly providing rate quotes for UP and BNSF customers." KCS-10/TM-10, p. 25. Mr. Davies adds that KCS's commitment means that "its carriers will continue to cooperate on ... providing excellent service." KCS-10/TM-10, Davies V.S., p. 14.

Please clarify the following:

- (1) Does KCS/NAFTA Rail commit that TFM will not discontinue (or alter in a way adverse to Union Pacific) any of the cooperative steps taken to date by TFM with respect to UP-TFM traffic moving over the Laredo or Brownsville gateways, unless changes in traffic volumes justify a change?
- (2) Does KCS/NAFTA Rail commit that TFM will not discriminate against UP-TFM traffic in favor of TFM traffic to or from Tex Mex or KCSR with respect to any of the areas of cooperation described or with respect to transit times and switching service on TFM?

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William A. Mullins, Esq

June 30, 2003

Page 3

- (3) Does KCS/NAFTA Rail commit to work with Union Pacific to develop measurements of TFM service levels and other conduct to ensure that TFM treats UP-TFM traffic fairly in comparison with TFM-Tex Mex (including TFM-Tex Mex-KCSR) traffic?
- (4) Does KCS/NAFTA Rail object to any of the provisions of the agreement proposed by Union Pacific in June to complement this commitment? If so, what are KCS's objections?

D. The "Keep the Laredo Gateway Open" Commitment

Mr. Davies explains that KCS's commitment to keep the Laredo Gateway "open on commercially reasonable terms" is aimed at alleviating concerns that "KCS intends to no longer quote rates to the Laredo Gateway or provide service only to or from the Laredo Gateway." KCS-10/TM-10, Davies V.S., p. 15. He explains that KCS's commitment is the "same commitment that was made in the CN/WC and CSX/NS/Conrail merger cases and KCS will live by those commitments." *Id.* He also states KCS's commitment to "provide the same level of service to UP and BNSF as they have experienced in the past."

Please clarify the following:

- (1) Mr. Davies' statement refers to this commitment as made by "KCS," which he defines to mean Kansas City Southern Railway Company (referred to as "KCSR" in the body of Applicants' Supplement) rather than Kansas City Southern, suggesting that KCS's commitment may only be to quote rates between KCSR points and the border. Does KCS/NAFTA Rail commit to keep the Laredo Gateway open for UP-TFM routings of northbound and southbound U.S.-Mexico rail traffic?
- (2) What terms does KCS regard as "commercially reasonable"?
- (3) Does KCS/NAFTA Rail commit that TFM will not discriminate against Union Pacific in favor of Tex Mex and/or KCS with respect to rates (or rate factors or revenue requirements) or service?
- (4) In the *CN/WC* case referred to by Mr. Davies, CN entered an agreement with the National Industrial Transportation League and made several specific commitments regarding the steps CN and WC would take to preserve existing gateways, and the Board imposed conditions requiring Applicants to abide by their representations. Does KCS/NAFTA Rail commit to abide by all of the gateway preservation commitments made in the *CN/WC* case?

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William A. Mullins, Esq
June 30, 2003
Page 4

- (5) Is KCS/NAFTA Rail prepared to commit to establish TFM rate factors that Union Pacific can employ in quoting origin-to-destination rates via UP-TFM routings for traffic as to which TFM-Tex Mex (including TFM-Tex Mex-KCSR) routings are potentially competitive so that Union Pacific need not engage in prior consultation or negotiations with KCS/NAFTA Rail or its affiliates?
- (6) Will KCS/NAFTA Rail agree to a proportional rate agreement similar to that adopted by UP and BNSF in the UP/SP merger proceeding (*see* 1 S.T.B. at 253-54) as a mechanism for implementing the KCS commitment to keep the Laredo Gateway open? Such an agreement would ensure that UP and BNSF can continue to quote competitive rates to and from TFM points. If not, why not?

* * *

We would appreciate Applicants' prompt response to these requests for clarification.

Sincerely,



David L. Meyer

cc: The Honorable Vernon A. Williams
All Parties of Record

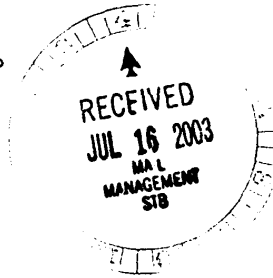
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July 16, 2003

BY FACSIMILE

William A. Mullins, Esq.
Baker & Miller PLLC
915 Fifteenth Street, NW
Suite 1000
Washington, DC 20005-2318

Re: **Finance Docket No. 34342**

Dear Bill:

On June 30 I wrote to you requesting that Kansas City Southern ("KCS") clarify the commitments it made on the record in this proceeding in its Supplement to Application (KCS-10/TM-10). Other parties have expressed considerable interest in KCS's response, but I have not yet received a response or any indication that one is forthcoming. The parties to this proceeding need to understand the extent to which KCS's on-the-record commitments might provide meaningful and effective protections against the potential adverse competitive effects of the proposed KCS-Tex Mex-TFM transaction.

While Union Pacific hopes that discussions between the principals of Union Pacific and KCS on these issues could yield agreements implementing the commitments, we believe it is also important to have prompt written clarifications that all parties to the proceeding can review and consider in formulating their positions. Little time remains before the July 31 hearing and the August 4 date for interested parties to file their comments with the Board. Please provide a prompt response to my June 30 letter so that UP and other parties can prepare their comments.

Sincerely,

A handwritten signature in dark ink, appearing to read 'David'.

David L. Meyer

cc: The Honorable Vernon A. Williams
All Parties of Record